

**Angelis v Manoli**

2011 NY Slip Op 33603(U)

January 21, 2011

Sup Ct, Queens County

Docket Number: 22638/2009

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
Justice

- - - - -

DIMITRA ANGELIS,  
  
Plaintiff,  
  
- against -

Action No. 1  
Index No.: 22638/2009  
Motion Date: 01/13/2011  
Motion Nos.: 2 and 3  
Motion Seq.: 4 and 5

EVANGELIA S. MANOLI, SPIRIDON D.  
MANOLIS, JOHN A. WALKER AND  
ELIZABETH A. ARLOTTA,

Defendants.

- - - - - x

- - - - - x

EVANGELIA S. MANOLI-POLITIS and  
VASILIOS POLITIS  
  
Plaintiffs,  
  
- against -

Action No. 2  
Index No.: 33514/2009  
Motion Date: 01/13/2009  
Motion No.: 38  
Motion Seq.: 2

JOHN H. WALKER and ELIZABETH A.  
ARLOTTA,  
  
Defendants.

- - - - - x

The following papers numbered 1 to 5 were read on this motion by plaintiff in Action No. 1, Dimitra Angelis for an order pursuant to CPLR 3212 seeking partial summary judgment on the issue of liability as against defendants John H. Walker and Elizabeth A. Arlotta and striking the cross complaint brought by Walker and Arlotta against the co-defendants Evangelia S. Manoli and Spiridon D. Manolis

	<u>Papers Numbered</u>
Notice of Motion-Affirmation- Affidavit(s)-Service-Exhibit(s)	1-3
Affirmation in Opposition-Affidavit(s)-Exhibit(s)	4-5

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The following papers numbered 1 to 7 were read on this motion by the defendants in Action No. 1, Evangelia S. Manoli and Spiridon D. Manolis, for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint and all cross-claims against them:

	<u>Papers Numbered</u>
Notice of Motion-Affirmation- Affidavit(s)-Service-Exhibit(s)	1-2
Affirmation in Opposition-Affidavit(s)-Exhibit(s)	3-5
Reply Affirmation-Exhibit(s)	6-7

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The following papers numbered 1 to 6 were read on this motion by plaintiffs in Action No. 2, Evangelia Manoli-Politis and Vasilios Politis, for an order granting partial summary judgment on the issue of liability against the defendants in Action No. 2, John H. Walker and Elizabeth A. Arlotta

	<u>Papers Numbered</u>
Notice of Motion-Affirmation- Affidavit(s)-Service-Exhibit(s)	1-2
Affirmation in Opposition-Affidavit(s)-Exhibit(s)	3-4
Reply Affirmation-Exhibit(s)	5-6

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This is a personal injury action in which the plaintiffs in Action No. 2 (filed under Index No. 33514/2009), Evangelia Manoli-Politis ("Manoli") and Vasilios Politis seek to recover damages for injuries sustained by Evangelia Manoli-Politis as a result of a motor vehicle accident that occurred on June 9, 2008, between the vehicle owned by defendant Elizabeth A. Arlotta and

operated by defendant John H. Walker ("Walker"), and the vehicle owned by Spiridon D. Manolis and operated by Evangelia Manoli-Politis at or near the intersection of 25th Avenue and 47th Street in Queens County, New York.

Dimitri Angelis ("Angelis"), the plaintiff in Action No. 1, was a passenger in the Manoli vehicle. In a separate complaint, filed under Queens County Supreme Court Index No. 22638/09, Angelis seeks to recover damages for personal injuries against the owners and operators of both vehicles. The two actions were consolidated for joint trial by order of this court dated March 26, 2010.

There are presently three motions for partial summary judgment on the issue of liability pending before this court. In the first, the plaintiff in Action No. 1, Angelis, moves for summary judgment against defendants Walker and Arlotta. In the second motion, the plaintiffs in Action No. 2, Evangelia Manoli-Politis and Vasilios Politis move for summary judgment against the defendants Walker and Arlotta, and in the third motion, defendants in Action No. 1, Manoli and Manolis, move for partial summary judgment on the issue of liability dismissing the Angelis complaint and all cross-claims asserted against them by the co-defendants.

All three motions are premised on the same facts and all of the motions contend that summary judgment should be granted against John Walker and Elizabeth Arlotta based upon Walker's

admission to the police at the scene and at his examination before trial that he failed to stop for a stop sign and that such failure was the cause of his vehicle striking the Manoli vehicle as Manoli was proceeding through the intersection of 47<sup>th</sup> Avenue with the right of way having no traffic control device in her direction.

In support of her motion for summary judgment against Walker, Angelis submits the affidavit of her counsel, Russell D. Mauro; the police accident report dated June 9, 2008 (MV-104); a copy of the pleadings; a copy of Angelis' verified Bill of Particulars; and relevant portions of the deposition testimony of Angelis, Arlotta, Walker and Manoli.

The accident in question occurred on June 9, 2008 at approximately 12:34 p.m. in Astoria, Queens. Ms. Angelis testified at her deposition that she was a front seat passenger in the vehicle driven by her co-worker, Evangelia Manoli. At the time of the accident, the Manoli vehicle was proceeding eastbound on 25<sup>th</sup> Avenue and the Walker vehicle was proceeding northbound on 47<sup>th</sup> Street, which had a stop sign at its intersection with 25<sup>th</sup> Avenue. There was no traffic device for Manoli's direction of travel on 25<sup>th</sup> Avenue. Angelis contends the accident occurred as the Manoli vehicle was proceeding through the intersection with the right of way and Walker's vehicle failed to stop at the stop sign and proceeded into the intersection, striking Manoli's vehicle.

Ms. Angelis age 44, testified at her examination before trial

on February 4, 2010, that she was a friend and a co-worker in a medical office with Evangelia Manoli. On the day of the accident she was a front seat passenger and Ms. Manoli was operating the vehicle. Angelis stated that they were traveling on 25<sup>th</sup> Avenue and when they reached the intersection of 47<sup>th</sup> Street the automobile being driven by John Walker collided with their vehicle. She testified that there were two stop signs at the intersection on 47<sup>th</sup> Street in the direction of travel of the Walker vehicle. There was no traffic control device on 25<sup>th</sup> Avenue in the direction they were traveling. She stated that the Manoli vehicle was in the intersection when Walker's front left came into contact with Manoli's front quarter panel on the passenger side. She stated that she did not see Walker's vehicle until seconds before the accident.

The driver of the vehicle, Evangelia Manoli, age 38, testified at her examination before trial on September 3, 2010, that she was driving her father's 1994 Dodge on 25<sup>th</sup> Avenue with Ms. Angelis in the front seat. She stated that as she approached the intersection of 47<sup>th</sup> Street she was traveling approximately 20-25 miles per hour. As there was no traffic control device in her direction, she glanced left and right prior to entering the intersection but did not see any other vehicles. However, as soon as she entered the intersection her car was hit by the vehicle being driven by Walker. She testified that there was a stop sign at the intersection facing 47<sup>th</sup> Street in the direction in which Walker's

vehicle was traveling.

John Walker, age 81, testified at his deposition on February 4, 2010, that he was traveling on 47<sup>th</sup> Street at approximately 20-25 miles per hour. His wife, Elizabeth Arlotta, the registered owner of the vehicle, was a passenger. Walker conceded that there was a stop sign controlling traffic on 47<sup>th</sup> Street in his direction and that there was no traffic control device on 25<sup>th</sup> Avenue. Walker testified that he must have stopped at the stop sign but that he did not see the Manoli vehicle until the instant before the impact. Walker testified that when the police arrived at the scene, "I told them I drove through the stop sign, it's my fault. It's just that simple." When asked if that was still his belief, he answered, "Yeah, I went through the stop sign.....period." When asked if he believed that the accident was his fault he answered, "yeah, I do."

The police report also states that the Walker vehicle "proceeded through a stop sign on the corner of 47<sup>th</sup> Street and 25<sup>th</sup> Avenue failing to yield right of way to [the Manoli vehicle]".

In support of the motion for summary judgment by the plaintiffs in Action No. 2, counsel for Evangelia Manoli, Costas M. Eliades states in his affirmation in support of the motion that he adopts and incorporates the facts, legal arguments and exhibits set forth in the affirmation of Russell D. Mauro in support of plaintiff Angelis' motion for summary judgment on the issue of liability as

against defendants John Walker and Elizabeth Arlotta.

In support of the motion for summary judgment brought by Manoli as defendant in Action No. 2, counsel Tracy Morgan contends, based upon the deposition testimony of the parties as set forth above, that the Angelis complaint must be dismissed as against Evangelia Manoli and Spiridon Manolis as Manoli was lawfully traveling on 25<sup>th</sup> Avenue with no traffic control devices and with the right of way at the intersection of 47<sup>th</sup> Street when co-defendant Walker, who was traveling on 47<sup>th</sup> Street and was obligated to stop at the stop sign and yield the right of way, entered the intersection causing the collision in which Manoli and Angelis were allegedly injured.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of its position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

The New York Vehicle and Traffic Law § 1142(a) requires that any vehicle approaching a stop sign shall stop and shall yield the right-of-way to any vehicle which is approaching so closely on said highway as to constitute an immediate hazard. "A driver who fails to yield the right-of-way after stopping at a stop sign controlling

traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law" (Thompson v Schmitt, 74 AD3d 789 [2d Dept. 2010]; also see Goemans v County of Suffolk, 57 AD3d 478[2d Dept. 2008]; McNamara v Fishkowitz, 18 AD3d 721[2d Dept. 2005]; Ishak v Guzman, 12 AD3d 409 [2d Dept. 2004]; Rossani v Rana, 8 AD3d 548 [2d Dept. 2004]). The question of whether the driver stopped at the stop sign is not dispositive where the evidence establishes that he or she failed to yield even if he or she did stop (see Martin v Ali, 2010 NY Slip Op 8908[2d Dept. 2010]; Mei Yan Zhang v Santana, 52 AD3d 484[2d Dept. 2008]); Batts v Page, 51 AD3d 833 [2d Dept. 2008]; Klein v Crespo, 50 AD3d 745 [2d Dept. 2008]).

Moreover, a driver is required to see that which through proper use of his or her senses he or she should have seen and a driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him or her to yield (see Wesh v Laidlaw, 59 AD3d 534 [2d Dept. 2009]; Gergis v Miccio, 39 AD3d 468[2d Dept. 2007]; Maliza v Puerto-Rican Transp. Corp., 50 AD3d 650[2d Dept. 2008]; Rosenberg v Kotsek, 41 AD3d 573 [2d Dept. 2007]; Mizrahi v Lam, 40 AD3d 594[2d Dept. 2007]).

Here, the movants, Manoli and Angelis made the requisite prima facie showing of entitlement to summary judgment by demonstrating that the Walker vehicle, whose course of travel was controlled by a stop sign, entered the intersection when it was unsafe to do so without yielding the right-of-way, and that this was the sole

proximate cause of the accident (see Klein v Crespo, 50 AD3d at 745[2d Dept. 2008]; Hull v Spagnoli, 44 AD3d at 1007 [2d Dept. 2007]; Gergis v Miccio, 39 AD3d at 468-469 [2d Dept. 2007]); Grossman v Spector, 48 AD3d 750[2d Dept. 2008]). Manoli was entitled to anticipate not only that Walker would stop as required, but also that Walker's vehicle would yield to traffic on 25<sup>th</sup> Avenue (see McNamara v Fishkowitz, 18 AD3d 721 [2d Dept. 2005]; Klein v Byalik, 1 AD3d 399 [2d Dept. 2003]).

Having made the requisite prima facie showing of their entitlement to summary judgment, the burden then shifted to Walker to raise a triable issue of fact as to whether Manoli was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

In opposition to all three motions, Walker's counsel Andrea E. Ferrucci submitted her own affidavit as well as the examination before trial of Angelina Manoli. Based upon Manoli's deposition testimony, counsel contends that a factual issue remains as to the extent that the plaintiff contributed to the occurrence of the accident by virtue of failing to exercise ordinary prudence and to use such care to avoid the collision. Specifically, counsel contends that a question of fact exists as to whether Ms. Manoli may have caused or contributed to the accident because she stated in her deposition that she did not see Walker's vehicle immediately prior

to the impact and therefore she failed to see all that could be seen and that she could have avoided the accident by keeping a proper lookout.

Although counsel contends that Ms. Manoli may have caused or contributed to the accident, this court finds that there is no evidence in the depositions submitted to show that Manoli was in any way responsible for the accident. It has been recognized that a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision" (Yelder v Walters, 60 AD3d 734 [2d Dept. 2010]; also see Jaramillo v Torres, 60 AD3d at 735 [2d Dept. 2009]; DeLuca v Cerda, 60 AD3d 721 [2d Dept. 2009]). Further, it is apparent from Walker's deposition that he attributed the cause of the accident solely to his failure to stop at the stop sign and his own admitted failure to see the Manoli vehicle until the moment of impact rather than to any negligent actions on the part of Ms. Manoli.

Counsel's conclusory statement that there are questions as to the comparative negligence of Evangelia Manoli without providing an adequate factual predicate is insufficient to raise a question of fact (see Khan v Nelson, 68 AD3d 1062, 1063 [2d Dept. 2009]; Mateiasevici v Daccordo, 34 AD3d 651, 652[2d Dept. 2006]; Platt v Wolman, 29 AD3d 663 [2d Dept. 2006]; McNamara v Fishkowitz, 18 AD3d 721[2d Dept. 2005]).

Accordingly, based on the foregoing, it is

ORDERED that the plaintiff in Action No. 1, DIMITRA ANGELIS, shall have summary judgment on the issue of liability as against the defendants in Action No. 1, JOHN A. WALKER and ELIZABETH A. ARLOTTA, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED that the defendants in Action No. 1, EVANGELIA S. MANOLI and SPIRIDON D. MANOLIS, shall have summary judgment on the issue of liability as against the plaintiff in Action No. 1, DIMITRA ANGELIS, dismissing the complaint as against them and dismissing all cross-claims asserted against them by the co-defendants in Action No. 1, JOHN A. WALKER and ELIZABETH A, ARLOTTA, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED that the plaintiffs in Action No. 2, EVANGELIA S. MANOLIS-POLITIS and VASILIOS POLITIS, shall have summary judgment on the issue of liability as against the defendants in Action No. 2, JOHN H. WALKER and ELIZABETH A. ARLOTTA, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED that a copy of this order with notice of entry be served on the Clerk of the Trial Term Office and that upon compliance with all the rules of the Court, these actions shall be placed on the trial calendar of the Court for an assessment of damages.

Dated: January 21, 2011  
Long Island City, N.Y.

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**ROBERT J. MCDONALD**  
**J.S.C.**