

<b>Carter v City of New Rochelle</b>
2016 NY Slip Op 33199(U)
July 5, 2016
Supreme Court, Westchester County
Docket Number: Index No. 55298/13
Judge: Linda S. Jamieson
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NYSCEF DOC. NO. 90

INDEX NO. 15-898/2016  
To commence the statutory time period for appeals as  
of right (RECEIVED, NYSCJ12 to serve 06/2016  
copy of this order, with notice of entry, upon all parties.

Disp \_\_\_\_\_ Dec   x   Seq. Nos.   2-3   Type   SJ  

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**PRESENT: HON. LINDA S. JAMIESON**  
-----X

EDWARD CLINTON CARTER,  
  
Plaintiff,

-against-

Index No. 55298/13  
  
DECISION AND ORDER

CITY OF NEW ROCHELLE, ROBERT BOYKO,  
LOUIS SANTIAGO and CATALINO RAMOS,  
  
Defendants.

-----X

The following papers numbered 1 to 5 were read on these  
motions:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1
Affirmation and Exhibits in Opposition	2
Notice of Motion, Affirmation and Exhibits	3
Affirmation and Exhibits in Opposition	4
Reply Affirmation	5

There are two motions for summary judgment on liability before the Court in this action arising out of a car accident on July 3, 2012. The first motion is filed by defendants Santiago and Ramos, the driver and owner, respectively, of the car in which plaintiff was a passenger at the time of the accident (the "First Motion"). The second motion is filed by plaintiff. This motion is untimely and must be denied as a result. The Trial

Readiness Order signed by Justice Lefkowitz on November 18, 2015 states that any motion for summary judgment by any party must be filed within 60 days of the filing of the Note of Issue. The Note of Issue was filed on November 20, 2015. The First Motion was timely, as it was filed on January 29, 2016 - the 60<sup>th</sup> day. Plaintiff, in contrast, did not file his motion until March 25, 2016, nearly two months after the deadline had passed. Plaintiff did not even seek leave to file a late motion. The motion is thus untimely and cannot be considered. See *Caban v. Mastrosimone*, 129 A.D.3d 757, 758, 10 N.Y.S.3d 615, 616 (2d Dept. 2015) (denying leave to file late summary judgment motion).

The facts here are not much in dispute. Santiago was stopped at a red light on Memorial Highway in New Rochelle, at the intersection with Lincoln Avenue. Santiago was waiting to turn right at the red light, when the police car driven by Police Officer Boyko signaled to Santiago to make the turn. Santiago understood the signal, and began to make the turn. Santiago abruptly stopped his car in the middle of the turn when he noticed that there was a sign at the intersection which prohibited right turns on red lights before 4 p.m. on school days. As stated above, this accident occurred on July 3<sup>rd</sup>, which was the middle of the summer - and not a school day.


While it is true that "a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence

against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision," it is also true that "One of several nonnegligent explanations for a rear-end collision is a sudden stop of the lead vehicle." *Klopchin v. Masri*, 45 A.D.3d 737, 737-38, 846 N.Y.S.2d 311, 311 (2d Dept. 2007). Here, this is exactly what happened. Defendant Boyko signaled to defendant Santiago to make the turn, and expected him to make the turn since he was being told to do so by a police officer. Yet Santiago stopped in the middle of the turn, because he misunderstood the sign stating that no right turns were allowed on school days. A jury should decide whether he contributed to the accident. *Niemiec v. Jones*, 237 A.D.2d 267, 268, 654 N.Y.S.2d 163, 165 (2d Dept. 1997) ("A driver of a motor vehicle has a duty to keep proper control of that vehicle, and to not stop suddenly or slow down without proper signalling so as to avoid a collision. Where a defendant contends that the vehicle in front of him came to an unexplained sudden stop, questions of fact are raised that should be submitted to the jury.").

The motion for summary judgment is thus denied. The parties are directed to appear for a Settlement Conference in the Settlement Conference Part, Courtroom 1600, on September 13, 2016 at 9:15 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
July 5, 2016

  
HON. LINDA S. JAMIESON  
Justice of the Supreme Court

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