

<b>Corvino v Schineller</b>
2017 NY Slip Op 33166(U)
February 8, 2017
Supreme Court, Nassau County
Docket Number: 608069/16
Judge: Robert A. Bruno
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SHORT FORM ORDER**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT: HON. ROBERT A. BRUNO, J.S.C.**

-----X

JANET CORVINO,

Plaintiff,

-against-

JOSEPH H. SCHINELLER,

Defendant.  
-----X

TRIAL/IAS PART 14  
Index No.: 608069/16  
Submission Date: 01/09/17  
Motion Sequence: 001

**DECISION & ORDER**

**Papers Numbered**

*Sequence #001*

Notice of Motion, Affirmation & Exhibits .....	1
Affirmation in Opposition & Exhibits .....	2
Reply Affirmation .....	3

Upon the foregoing papers, plaintiff's motion for an Order pursuant to CPLR §3212 granting plaintiff summary judgment on the issue of liability is determined as set forth below.

This is an action to recover for personal injuries allegedly sustained as the result of a motor vehicle accident that occurred on December 9, 2015, at the intersection of Hicksville Road and North Queens Road Avenue in Massapequa, New York, between a vehicle operated by plaintiff JANET CORVINO and a vehicle operated by defendant JOSEPH H. SCHINELLER. The action was commenced on October 20, 2016, and issue was joined on December 13, 2016. Plaintiff moves for summary judgment based upon her assertion that defendant's negligence was the sole proximate cause of the accident.

In support of her motion, plaintiff submits, among other things, her own affidavit, sworn to on November 10, 2016 (*Mot. Exh. C*). Plaintiff avers:

\* I was operating my [plaintiff's vehicle] northbound on Hicksville Road and approaching North Queens Avenue with a green traffic signal controlling traffic in the direction which I was traveling when [defendant's vehicle], while traveling southbound on Hicksville Road, suddenly,

CORVINO v SCHINELLER  
Index No. 608069/16

unexpectedly and without warning, attempted to make a left turn onto eastbound North Queens Avenue, colliding with my vehicle.

- \* Prior to the Defendant turning left, my vehicle was already completely in the intersection traveling straight and I had the right of way to proceed.
- \* The Defendant turned so suddenly, unexpectedly and without warning or signal that I was unable to avoid the collision. At no time prior to turning left did the defendant indicate his intention to do so either by blinker or signal.
- \* Immediately prior to the collision, I was traveling at approximately 25 to 30 miles per hour and I was completely within my lane of travel.
- \* At the moment of the collision, my vehicle was completely within the intersection, my headlights were properly functioning and illuminated.

*Mot. Exh. C, ¶¶ 6-10, (par. num. omitted).* Plaintiff argues that defendant violated Section 1141 of the NY Vehicle and Traffic Law by making a left turn at an intersection and failing to yield the right of way. On that basis, plaintiff maintains that defendant's conduct was the sole proximate cause of the accident, and that plaintiff is entitled to judgment as a matter of law.

In opposition, defendant submits, among other things, his own affidavit, sworn to on December 28, 2016 (*Aff. In Opp., Exh. C*). Defendant avers:

- At the time of the accident, I was traveling southbound on Hicksville Road and executing a left hand turn onto North Queens Avenue.
- I believe the plaintiff's vehicle was coming from my right hand side and coming out of a shopping center parking lot located close to where the accident occurred, which is controlled by a three phase traffic light.
- I believe the accident occurred when the plaintiff came out of the nearby parking lot and ran a red light causing the accident.
- At the time of the accident, I had a green traffic light in my favor and I was making a left hand turn with my left hand turn directional blinker displayed.

\*\*\*

CORVINO v SCHINELLER  
Index No. 608069/16

- As I approached the intersection of Hicksville Road (Route 107) and North Queens Avenue and before I began to make my left hand turn, I checked for any oncoming vehicles. I looked southbound on Hicksville Road and I also checked if there were any vehicles moving northbound. My vehicle was in the designated left turning lane before I began to make a left hand turn.
- When I checked for any vehicles traveling northbound on Hicksville Road, I did not see any vehicles approaching towards my direction or traveling in the opposite direction on Hicksville Road going northbound.
- After checking for any oncoming traffic and when it was safe to do so, I began making my left hand turn and as my vehicle was 45 degrees into my turn, that is when the accident occurred.
- My vehicle was traveling five (5) miles per hour at the time of the accident.

*Aff. In Opp, Exh. C, ¶¶ 4-7, 11-14, (par. num. omitted).*

The Court finds that plaintiff has set forth *prima facie* proof of entitlement to judgment as a matter of law by submission of evidence in admissible form, namely her sworn affidavit, demonstrating that defendant violated Vehicle and Traffic Law §1141 by making an abrupt left-hand turn into the path of her vehicle, which was passing through an intersection with a green light in its favor and the right of way. See *Hyo Jin Yoon v. Guang Chen*, 127 AD3d 1023 (2d Dept. 2015); *Griffin v Pennoyer*, 49 AD3d 341 (1<sup>st</sup> Dept. 2008); *Welch v Norman*, 282 A.D.2d 448 (2d Dept. 2001); *Stiles v County of Dutchess*, 278 A.D.2d 304 (2d Dept. 2000); *Canceleno v Johnston*, 264 A.D.2d 405 (2d Dept. 1999). She has also demonstrated her own freedom from comparative fault by her sworn statement that she was unable to avoid the collision because the defendant's turn was sudden, unexpected and without signal or warning. See *Cadeau v Gregorio*, 104 AD3d 464 (1<sup>st</sup> Dept. 2013); *Ducie v Ippolito*, 95 AD3d 1067 (2d Dept. 2012).

Less clear is whether defendant's affidavit is sufficient to raise a triable issue of fact. Although it is undisputed that defendant made a left turn at the intersection, the affidavits are conflicting as to the direction of travel of plaintiff's vehicle, a material fact upon which liability may turn. Defendant's use of the words "I believe" prior to describing the trajectory of plaintiff's vehicle arguably renders the statement speculative to the extent it implies that he did not actually see plaintiff's vehicle exiting the parking lot. It is not wholly speculative, however, to the extent it implies a basis for the belief – such as the existence of the parking lot on the west side of the intersection and defendant's sensory recollection of the accident.

CORVINO v SCHINELLER  
Index No. 608069/16

At this stage of the proceedings, no meaningful discovery has been conducted, and the only admissible evidence before this Court are the two conflicting affidavits. The Court finds that facts may exist, which cannot now be stated, that may justify opposition to summary judgment (see CPLR §3212 [f]), such as regarding plaintiff's travels on the night in question, the nature and location of the impact she felt, and the nature and location of the damage to her vehicle. In view of the factual dispute and the Court's inability to assess credibility, the Court finds that, at this juncture, it cannot determine liability as a matter of law.

Based upon the foregoing, it is

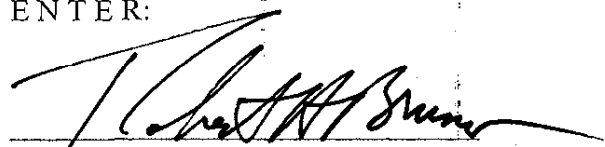
**ORDERED**, that plaintiff's motion for summary judgment on the issue of liability is *denied*, without prejudice to a subsequent application for such relief upon the completion of discovery.

All matters not decided herein are denied.

This constitutes the Decision and Order of this Court.

Dated: February 8, 2017  
Mineola, New York

ENTER:



Hon. Robert A. Bruno, J.S.C.

**ENTERED**  
FEB 16 2017  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE