

<b>Garcia v Soto</b>
2018 NY Slip Op 34083(U)
March 30, 2018
Supreme Court, Orange County
Docket Number: Index No. EF003020-2016
Judge: Sandra B. Sciortino
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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
MARIBEL GARCIA and GERALDO ALTAMIRANO,

Plaintiffs,

-against-

ENMA C. SOTO and ROBERT SULLIVAN,

Defendants.  
-----X

DECISION AND ORDER  
INDEX NO.: EF003020-2016  
Motion Date: 01/31/2018  
Sequence No. 2

The following papers numbered 1 to 16 were read on this motion by defendant Enma C. Soto

for summary judgment:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion / Affirmation (Bave) / Exhibits A - I / Memorandum of Law	1 - 12
Plaintiffs' Affirmation in Opposition (Schneider)	13
Co-Defendant's Affirmation in Opposition (Gatzambide)	14
Affirmation in Reply to Plaintiffs' Oppositon (Bave)	15
Affirmation in Reply to Co-Defendants' Opposition (Bave)	16

Upon the foregoing papers, the motion is granted.

This action arises out of a motor vehicle accident which occurred on August 6, 2015, at the intersection of Robinson Avenue and First Street, in Newburgh, Orange County. On that date, plaintiff Garcia was a passenger in a vehicle owned and operated by defendant Soto. As Soto attempted to cross the intersection, traveling east on First Street, her vehicle came into contact with a vehicle owned and operated by defendant Sullivan.

At her deposition, defendant Soto testified that she had been stopped at a red light at the

intersection for approximately 40 seconds. When the light turned green, she waited a few seconds and then proceeded slowly through the intersection. As she traveled across the intersection at a speed less than ten miles per hour, she saw the Sullivan vehicle, but anticipated that it would stop at the red light. The Sullivan vehicle, instead, ran the red light, and struck her vehicle.

At his deposition, defendant Sullivan testified that he was traveling north on Robinson Avenue and did not see a traffic signal as he approached the intersection with First Street. He had been through the intersection several times before, but never noticed the traffic signal. There was nothing preventing him from looking up at the traffic signal on the date of the accident.

#### **Motion for Summary Judgment**

By Notice of Motion filed on January 11, 2018, Soto seeks summary judgment on the ground that she was not negligent in the operation of her vehicle. She contends that Sullivan's negligence, in violating Vehicle and Traffic Law § 1111(d) by entering the intersection against a red traffic light, was the sole cause of the accident. Soto further contends that she was entitled to anticipate that Sullivan would obey the traffic signal and yield the right of way. She thus concludes that she is entitled to summary judgment on the issue of liability.

In opposition, plaintiffs assert that Sullivan disputed traveling through a red light and denied causing the accident. Plaintiffs thus contend that issues of fact preclude summary judgment. Defendant Sullivan advances the same argument, and further contends that Soto's inability to estimate her own rate of speed leaves unresolved issues of fact as to her comparative negligence. Finally, Sullivan contends that, when both drivers claim to have had a green light, summary judgment must be denied.

In reply, Soto points out that Sullivan did not claim he had a green light. Rather, he admitted

to being unaware that the intersection was controlled by a traffic signal. His conclusory assertion that he did not cause the accident is insufficient to raise a triable issue of fact. Further, as Soto testified that she waited for a green light, and then proceeded through the intersection at a speed of less than ten miles per hour, there is no evidence that she was negligent in the operation of her vehicle.

The Court has fully considered the submissions of the parties.

### Discussion

Summary judgment is a drastic remedy and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact (*Piccirillo v. Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]). The function of the court on such a motion is issue finding, and not issue determination (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). The court is not to engage in the weighing of evidence; rather, the court's function is to determine whether "by no rational process could the trier of facts find for the non-moving party" (*Jastrzebski v. N. Shore Sch. Dist.*, 232 AD2d 677, 678 [2d Dept 1996]).

The court is obliged to draw all reasonable inferences in favor of the non-moving party (*Rizzo v. Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 1995]). Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted (*Anyanwu v. Johnson*, 276 AD2d 572 [2d Dept 2000]). Where facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility, summary judgment must not be granted (*Jastrzebski*, 223 AD2d at 678).

In the matter at bar, Soto established her *prima facie* entitlement to judgment by submission of the various deposition transcripts. Her testimony, that she remained stopped at the intersection

until the traffic light turned green, then waited several seconds, then traveled across the intersection at a speed less than ten miles per hour, is uncontroverted. Likewise uncontroverted is Sullivan's testimony that he never saw the traffic signal, and was never aware that the intersection was controlled by such a signal.

In opposition, plaintiffs and defendant Sullivan failed to raise a triable issue of fact. Their papers, at best, feign issues of fact, including an assertion by Sullivan's attorney that Sullivan claims to have had a green light. That assertion, unsupported by any evidence in the record, is, in fact, directly contradicted by Sullivan's own testimony that he was unaware the traffic signal existed.

Likewise contradicted by the record is Sullivan's assertion that Soto has not eliminated all issues of fact because she could not estimate her own speed. Soto testified that she traversed the intersection at a speed of less than ten miles per hour. As Soto waited for her traffic signal to turn green and then proceeded slowly across the intersection, it cannot be argued that her negligence contributed to the occurrence of the accident. While every driver is charged with a duty to see what is there to be seen, a driver who has the right-of-way is entitled to anticipate that the other motorist will obey the traffic law requiring him to yield (*Laino v. Lucchese*, 35 AD3d 672 [2d Dept 2006]).

On the basis of the foregoing, the Court finds that plaintiffs and defendant Sullivan have failed to raise a triable issue of fact on the issues of proximate cause and comparative negligence. Soto's application thus is granted, and the complaint and all cross-claims against her are dismissed.

With the dismissal of all claims against Soto, the issue of liability is resolved. On the Court's own motion, summary judgment is granted to plaintiffs against defendant Sullivan on the issue of liability.

The remaining parties shall appear for conference on the issue of damages, and for the

scheduling of a trial date, on April 26, 2018 at 9:00 a.m.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 30, 2018  
Goshen, New York

ENTER:  
  
HON. SANDRA B. SCIORTINO, J.S.C.

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VIA NYSCEF

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