Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:
WILLIAM B. REBOLINI
Justice

Hermione Lauture,

Plaintiff,

-against-

Edward Sampson,

Defendant.

Motion Sequence No.: 002; MD
Motion Date: 11/1/17
Submitted: 11/15/17

Index No.: 621079/2016**E**

Attorney for Plaintiff:

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Attorney for Defendant:

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Clerk of the Court

Upon the **E-file document list** numbered 14-26 read on this application for partial summary judgment on the issue of liability; it is

ORDERED that defendant's motion pursuant to CPLR 3212 for partial summary judgment on the issue of liability is denied.

By summons and complaint dated December 22, 2016, plaintiff commenced this action to recover damages for personal injuries she alleges were the result of a motor vehicle accident that occurred on August 4, 2016 at approximately 3:00 p.m. in the afternoon at or near the intersection of Walt Whitman Road and South Service Road, in the Town of Huntington, County of Suffolk. Defendant joined issue by the service of a verified answer dated January 24, 2017. In support of the motion, defendant submits copies of the pleadings, an affirmation of his attorney, discovery

demands, plaintiff's verified bill of particulars, a certified copy of the Suffolk County Police Accident Report, plaintiff's duly executed deposition transcript, and defendant's duly executed deposition transcript. Defendant moves for summary judgment on liability on the grounds that plaintiff violated Vehicle and Traffic Law §1141 by failing to yield the right of way to defendant's vehicle. Defendant contends that plaintiff made a left hand turn into the subject intersection, without the right of way, colliding with defendant's vehicle. In opposition, plaintiff submits her attorney's affirmation and her affidavit which aver that plaintiff's vehicle was stopped for approximately one to two minutes at a red traffic signal at the intersection of Walt Whitman Road southbound and South Service Road, that the red traffic signal changed to a green left-turn arrow, at which time plaintiff proceeded to make a legal left turn onto South Service Road. After proceeding to make the left turn, defendant's vehicle, which was traveling northbound on Walt Whitman Road, struck the plaintiff's vehicle.

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact *(see **Rotuba Extruders, Inc. v Ceppos***, 46 NY2d 223, 413 NYS2d 141 [1978]; ***Andre v Pomeroy***, 35 NY2d 361, 362 NYS2d 131 [1974]). It is well settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient proof to demonstrate the absence of any material issues of fact (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923, 925 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316, 318 [1985]). Further, the credibility of the parties is not an appropriate consideration for the Court (***S.J. Capelin Assoc., Inc. v Globe Mfg. Corp.***, 34 NY2d 338, 357 NYS2d 478 [1974]), and all competent evidence must be viewed in a light most favorable to the party opposing summary judgment (***Benincasa v Garrubbo***, 141 AD2d 636, 637, 529 NYS2d 797,799 [2d Dept 1988]). Once a prima facie showing has been made, the burden shifts to the party opposing the summary judgment motion to produce evidence sufficient to establish the existence of a material issue of fact (*see **Alvarez v Prospect Hosp.***, 68 NY2d at 324, 508 NYS2d 923, citing ***Zuckerman v City of New York***, 49 NY2d at 562, 427 NYS2d 595). It is only in rare cases that a trial court is justified in holding that the acts of parties are negligent per se. The questions of negligence and contributory negligence are usually questions of fact (***Kellegher v Forty-Second Street, Manhattanville and St. Nicholas Avenue Railroad Company,*** 171 NY 309 [1902]).

The conduct of motorists at an intersection controlled by traffic signals is subject to the provisions of Vehicle and Traffic Law § 1111 and not the more general provisions of the Vehicle and Traffic Law such as those set forth in §§ 1140 and 1141, which govern the conduct of drivers at intersections that are not controlled by traffic lights (*see **Dicke v. Anci***, 31 AD3d 696, 821 NYS2d 93 [2d Dept. 2006]; ***Saggio v. Ladone***, 21 AD3d 407, 799 NYS2d 586 [2d Dept. 2005]; ***Rudolph v. Kahn***, 4 AD3d 408, 771 NYS2d 370 [2d Dept. 2004]; ***LeClari Pratt***, 270 AD2d 612, 704 NYS2d 354 [3d Dept. 2000]). Section 1111 of the Vehicle and Traffic Law permits motorists approaching an intersection with a green traffic signal to proceed through the intersection provided they yield to vehicles lawfully within the intersection and exercise reasonable care under the circumstances (*see **Schiskie v. Fernan***, 277 AD2d 441, 716 NYS2d 702 [2d Dept. 2000]; *see also **Shea v. Judson***, 283

NY 393 [1940]). Vehicle and Traffic Law § 1111 (a) (2) provides that "[t]raffic ... facing a steady green arrow signal may cautiously enter the intersection only to make the movement indicated by such arrow... [and] shall yield the right of way to other traffic lawfully within the intersection or an adjacent cross walk at the time such signal is exhibited." While a driver who has the right-of-way is entitled to anticipate that the other driver will obey traffic laws which require him or her to yield, the driver who has the right-of-way has a duty of care to exercise reasonable care to avoid a collision with another vehicle which was already in the intersection (*see* ***Wilson v Rosedom***, 82 AD3d 970, 919 NYS2d 59 [2d Dept 2011]).

A motorist facing a green traffic signal usually has the right to assume that the light is red for cross traffic and that such traffic will obey the law by stopping for the red light and remaining stationary until the light has changed to green (*see* ***Baughman v. Libasci***, 30 AD2d 696, [2d Dept. 1968]). That is to say, a motorist is entitled to proceed through an intersection confident that other vehicles will comport themselves with the obligations imposed on its driver by Vehicle and Traffic Law §1111 and without having to anticipate any sudden movement across her lane of travel (*see* ***Berner v. Koegel***, 31 AD3d 591, 819 NYS2d 89 [2d Dept. 2006]; ***Perez v. Brux Cab Corp***., 251 AD2d 157, 674 NYS2d 343 [1st Dept. 1998]). Although a motorist proceeding under a green light is not authorized to blindly and wantonly enter the intersection without keeping a proper lookout or employing a reasonable speed, (*see* ***Nuziale v. Paper Transport of Green Bay Incorporated***, 39 AD3d 833, 835 NYS2d 316 [2d Dept. 2007]), there is no requirement that the motorist reduce his or her speed at every intersection as a reduction in speed is required only where warranted by prevailing conditions (*see* VTL §1180(a) (e); ***Wallace v. Kuhn***, 23 AD3d 1042, 804 NYS2d 187 [4th Dept. 2005]; ***Mosch v. Hansen***, 295 AD2d 717, 744 NYS2d 222 [3rd Dept. 2002]; ***Barile v. Carroll***, 280 AD2d 988, 720 NYS2d 674 [4th Dept. 2001]; ***Wilke v. Price***, 221 AD2d 846, 633 NYS2d 686 [3rd Dept. 1995]).

In this instance, defendant has failed to make a prima facie showing of entitlement to relief, however, even if such a showing can be said to have been attained, plaintiff has demonstrated that there are genuine issues of material fact. In opposition, the plaintiff's deposition testimony raised triable issues of fact as to whether the plaintiff had the right-of-way when she entered the intersection, and whether defendant used reasonable care to avoid the collision after the plaintiff was already in the intersection (*see* ***Pollack v Margolin***, 84 AD3d 1341, 924 NYS2d 282 [2d Dept 2011]; ***Acosta v Blatt Plumbing Inc***., 55 AD3d 466, 865 NYS2d 592 [1st Dept 2008]). Specifically, the plaintiff testified that when the left turning arrow turned green, she did not see any vehicles traveling northbound through the intersection and she proceeded to make a left turn onto South Service Road. In reply, defendant asserts that plaintiff violated Vehicle and Traffic Law § 1141 by failing to see what was there to be seen, that being defendant's northbound vehicle. It would appear, however, that if the plaintiff had a green turning arrow, defendant would not have been lawfully proceeding into the intersection, as he would have had a red light as he approached the intersection (*see* VTL §1111). Here, there clearly are sharp discrepancies and gaps in the accounts of the parties as to who had the right-of-way. Both parties testified that they had the green light and, giving plaintiff every favorable inference, the Court finds that there are material questions of fact which preclude the grant of summary judgment (*see* ***Goulet v. Anastasio***, 148 AD3d 783, 48 NYS3d 731 [2d Dept. 2017];

Nuziale v. Paper Transport of Green Bay Inc., 39 AD3d 833, 835 NYS2d 316 [2d Dept. 2007]; ***Munter v. Hubert***, 34 AD3d 544, 825 NYS2d 490 [2d Dept. 2006]).

Accordingly, defendant's motion for summary judgment on liability is denied.

The parties' attorneys are scheduled to appear for a pretrial conference on **Wednesday, April 18, 2018 at 9:30 a.m.** at Part 7of the Supreme Court, 1 Court Street, Riverhead, New York.

Dated: 3/22/2018

William B Rebolini

HON. WILLIAM B. REBOLINI, J.S.C.

_____ **FINAL DISPOSITION** ___X___ **NON-FINAL DISPOSITION**