

**Brewer v Greene**

2018 NY Slip Op 34353(U)

January 24, 2018

Supreme Court, Dutchess County

Docket Number: Index No. 2016-52823

Judge: Peter M. Forman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
CHRISTOPHER BREWER,

Plaintiff,

-against-

ROBERT A. GREENE,

Defendant.

-----X  
FORMAN, J., Acting Supreme Court Justice

DECISION AND  
ORDER

Index No. 2016-52823

The Court read and considered the following documents upon  
this application:

	<u>PAPERS NUMBERED</u>
NOTICE OF MOTION.....	1
AFFIRMATION IN SUPPORT.....	2
EXHIBITS.....	3-6
AFFIRMATION IN OPPOSITION.....	7

This is a personal injury action based upon a September 12, 2016 motor vehicle accident in the Town of Cornwall. Plaintiff alleges that the accident occurred when Defendant failed to yield the right of way at a stop sign as required by the Vehicle and Traffic Law. Plaintiff also alleges that he suffered a serious injury as a result of this accident.

Plaintiff now moves for partial summary judgment on the issue of liability. For the reasons stated herein, that motion is granted.

## BACKGROUND

On September 12, 2016 at approximately 6 p.m., Defendant was stopped at a stop sign at the intersection of Holloran Road and Route 32 in the Town of Cornwall. At the same time, Plaintiff was traveling on his motorcycle on Route 32 and approaching the intersection.

Defendant testified that he waited at the stop sign for a few minutes before entering the intersection. Defendant also testified that there was no traffic approaching from the left when he decided to enter the intersection.

Defendant admitted that he saw Plaintiff approaching from the right before he entered the intersection. However, Defendant testified that Plaintiff was still "a good distance" away. Therefore, although he could not estimate Plaintiff's speed of travel when he saw the approaching motorcyclist, Defendant thought he had enough time to safely make a left turn onto Route 32.

Defendant pulled out and made a left onto Route 32, and then proceeded to travel "very slowly" up that road. Defendant estimated that he had traveled approximately one-quarter mile before he was rear-ended by Plaintiff. Defendant was issued a ticket at the scene for failure to yield the right of way.

Plaintiff testified that he saw Defendant's car stopped at the intersection. As plaintiff neared the intersection, Defendant

pulled out and turned left onto Route 32. Plaintiff was only about 15-20 feet from the intersection at this point.

Plaintiff testified that he applied his brakes upon seeing Defendant pull out in front of him. Plaintiff also testified that he "was in a full-on skid when [defendant] completed his turn," and that he could not stop before colliding with Defendant's vehicle.

#### DISCUSSION

It is well settled that "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" (*Goemans v County of Suffolk*, 57 AD3d 478, 479 [2d Dept 2008]; accord *Zuleta v Quijada*, 94 AD3d 876 [2d Dep't 2012]; *Friedberg v Citiwide Auto Leasing, Inc.*, 22 AD3d 522 [2d Dep't 2005]). "It is immaterial that [a driver] ... stopped at the stop sign before proceeding into the intersection" because the driver would not have had the right of way when he or she proceeded (*Zuleta* at 877). In addition, a driver is "obligated to see that which by the proper use of his senses he should have seen" (*Batal v Assoc. Univs.*, 293 AD2d 558, 559 [2d Dept 2002]; accord *Goemans, supra*).

Based on the uncontroverted facts in this record, defendant should have seen plaintiff approaching, and plaintiff was entitled to anticipate that defendant "would obey those traffic

laws which required him to yield" (*Spivak v Erickson*, 40 AD3d 962, 963 [2d Dept 2007]; see also *Klein v Crespo*, 50 AD3d 745 [2d Dept 2008]). Moreover, the record discloses no condition that would have required plaintiff to reduce his speed as he approached the intersection and that he had no time to take evasive action (see *Peralta v Moore*, 272 AD2d 458 [2d Dep't 2000] [plaintiff, by her own sworn testimony, was responsible for causing the accident, while defendants were in no position to take any steps to either reasonably foresee or to avoid the collision]).

Plaintiff has established, on a *prima facie* basis, that he is entitled to judgment as a matter of law. Therefore, it is incumbent upon Defendant to raise a triable issue of fact as to any comparative negligence on Plaintiff's part.

Defendant has failed to raise a triable issue of fact as to whether Plaintiff had enough time to stop his vehicle before colliding with Defendant's car. Specifically, Defendant admitted that he could not estimate Plaintiff's speed of travel when he pulled into the intersection. Although Defendant may have thought that he had enough time to pull out safely, the evidence clearly shows otherwise.

Specifically, the evidence demonstrates that the accident happened moments after Defendant proceeded through the stop sign and pulled out onto Route 32, despite his observation that Plaintiff was approaching the intersection on a motorcycle. "Such

a brief period of time is generally insufficient to raise a question of fact regarding a party's failure to take evasive action" (*LeClaire v Pratt*, 270 AD2d 612, 613 [3d Dept 2000]; see also *DeLuca v Cerda*, 60 AD3d 271 [2d Dept 2009] [plaintiff failed to raise issue of fact as to whether defendant, who only had seconds to react, was negligent in failing to avoid collision]). Based on the undisputed facts, Plaintiff was under no obligation to anticipate that Defendant would not yield the right of way (see *Friedberg, supra* [plaintiff entitled to anticipate that defendant would obey the stop sign requiring her to yield]).

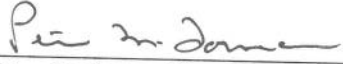
The record establishes as a matter of law that Defendant was negligent, and that his negligence was the sole proximate cause of the accident. Accordingly, Plaintiff's motion for partial summary judgment as to the issue of liability is granted. Based on the foregoing, it is hereby

ORDERED, that Plaintiff's motion for partial summary judgment as to liability is granted; and it is further

ORDERED that counsel shall appear for a compliance conference on February 26, 2018 at 9:30 AM.

The foregoing constitutes the Decision and Order of this court.

Dated: January 24, 2018  
Poughkeepsie, New York

  
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Hon. Peter M. Forman  
Acting Supreme Court Justice

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