

<b>Brown v Jian Yan Zheng</b>
2019 NY Slip Op 33832(U)
December 23, 2019
Supreme Court, Kings County
Docket Number: 525154/2018
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No.: 525154/2018  
Motion Date: 10-7-19  
Motion Cal. No.: 4-5

-----x  
CHARISMA BROWN,

Plaintiff,

-against-

JIAN YAN ZHENG and SIMONE ONEKA FONG,

Defendants,  
-----x

**DECISION/ORDER**

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

Papers:	Numbered:
Notices of Motion	
Affidavits/Affirmations/Exhibits.....	1
Notices of Cross-Motion	
Affidavits/Affirmations/Exhibits.....	2
Answering Affirmations/Affidavits/Exhibits.....	3
Reply Affirmations/Affidavits/Exhibits.....	4-5
Other.....	

Upon the foregoing papers, the motions are decided as follows:

In this action to recover damages for personal injuries, the plaintiff, CHARISMA BROWN, moves for an order awarding her summary judgment against both defendants on the issue of liability, striking defendants' affirmative defenses of comparative negligence and setting this matter down for a trial on the issues of apportionment of liability between the defendants and damages. Defendant ONEKA FONG s/h/a SIMONE ONEKA FONG cross-moves for an order awarding her summary judgment dismissing plaintiff's complaint insofar as asserted against her

MS #01-GEXT  
MS #02-XMD

and all cross-claims. Both motions are consolidated for disposition.

This action arises out of a two car accident that occurred on December 14, 2015, at the intersection of Glenwood Road and 103rd Street, Brooklyn, New York. The plaintiff, CHARISMA BROWN, was a passenger in a motor vehicle owned by defendant, ONEKA FONG, who was operating her vehicle on Glenwood Road. The other vehicle involved in the accident was owned by defendant, JIAN YAN ZHENG, who was operating her vehicle on 103rd Street.

In support of her motion, plaintiff submitted her own affidavit and a copy of the police accident report. Plaintiff averred in her affidavit that at the time of the accident, she was a front seat passenger in the Fong vehicle when it made contact with the Zheng vehicle at the subject intersection. She provided no other details of the accident.

In the police accident report, the reporting officer described the accident as follows:

At TPO, V1[Fong] states that after stopping at stop sign, V1 proceeded through the intersection then V2 [ZHENG] went through the stop sign and struck V2. V2 states that after stopping at stop sign, V1 never stopped at stop sign causing V2 to collide with V1. Police did not witness.

In opposition to plaintiff's motion and in support of the cross-motion, defendant Fong submitted the deposition transcripts of both defendants. Defendant Fong testified that as she was traveling on Glenwood Road towards the intersection, she stopped at the stop sign controlling traffic in her direction and that after stopping, she proceeded into the intersection notwithstanding the fact that she saw the Zheng vehicle less than half a block away proceeding towards her. She testified that the front bumper of the Zheng vehicle struck her vehicle on the

right passenger side from the middle to the front.

Defendant Zheng testified that while she was traveling on East 103rd Street towards the intersection, she stopped her vehicle at the stop sign which controlled traffic in her direction and that after stopping, she proceeded into the intersection after determining that there were no vehicles approaching the intersection from Glenwood Road. After entering the intersection, she maintained that her vehicle made contact with the Fong vehicle which she never saw before.

Pursuant to Vehicle and Traffic Law § 1142(a)<sup>1</sup>, a driver entering an intersection controlled by a stop sign must first stop at the stop sign, as required by Vehicle and Traffic Law § 1172, and after stopping, must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard. Generally, a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law (*see Breen v. Seibert*, 123 A.D.3d 963, 964, 999 N.Y.S.2d 176; *Derosario v. Gill*, 118 A.D.3d 739, 739, 987 N.Y.S.2d 225; *Maliza v. Puerto-Rican Transp. Corp.*, 50 A.D.3d 650, 651, 854 N.Y.S.2d 763; *Gergis v. Miccio*, 39 A.D.3d 468, 468, 834 N.Y.S.2d 253).

Here, plaintiff established her prima facie entitlement to judgment as a matter of law against both defendants on the issue of liability by submitting admissible proof demonstrating, as

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<sup>1</sup> Vehicle & Traffic Law § 1142(a) provides: "Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection."

a matter of law, that both of the defendants negligently proceeded into the intersection, without yielding the right-of-way to the other, after having allegedly stopped at their respective stop signs, and that their combined negligence was the sole proximate cause of the accident (*see* Vehicle and Traffic Law § 1142[a]; *Hunt v. New York City Tr. Auth.*, 166 A.D.3d 735, 736–737, 87 N.Y.S.3d 563; *Shashaty v. Gavitt*, 158 A.D.3d 830, 831, 71 N.Y.S.3d 560; *Fuertes v. City of New York*, 146 A.D.3d 936, 937, 45 N.Y.S.3d 562; *Zuleta v. Quijada*, 94 A.D.3d 876, 877, 943 N.Y.S.2d 111; *Yelder v. Walters*, 64 A.D.3d 762, 763–764, 883 N.Y.S.2d 290).

Although defendant Fong claims that she saw the Zheng vehicle approaching the intersection before she proceeded into the intersection, the evidence demonstrates as a matter of law that when she entered the intersection, the Zheng vehicle was “approaching so closely on said highway as to constitute an immediate hazard” (Vehicle and Traffic Law § 1142(a)). The evidence thus demonstrated that defendant Fong violated Vehicle and Traffic Law § 1142(a) as a matter of law and that there are no triable issue of fact concerning her negligence.

While defendant Zheng testified that she never saw the Fong vehicle before the accident, a driver is negligent where he or she fails to see that which through the proper use of his or her senses he or she should have seen (*see Pivetz v. Brusco*, 145 A.D.3d 806, 807, 43 N.Y.S.3d 457; *Estate of Cook v. Gomez*, 138 A.D.3d 675, 677, 30 N.Y.S.3d 148; *Rodriguez v. Klein*, 116 A.D.3d 939, 983 N.Y.S.2d 851; *Lu Yuan Yang v. Howsal Cab Corp.*, 106 A.D.3d 1055, 1056, 966 N.Y.S.2d 167). Therefore, there are no triable issues of fact as to Zheng’s negligence.

Accordingly, it is hereby

**ORDERED** that plaintiff’s motion for partial summary judgment is **GRANTED** solely to

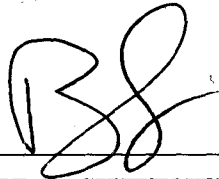
the extent that the Court finds that the negligence of both defendants was the sole proximate cause of the accident and that plaintiff was free from fault as a matter of law. Only the issues of apportionment of liability between the defendants and damages have to be tried. It is further

**ORDERED** that the affirmative defense of comparative negligence raised by each of the defendants in their respective answers is stricken; and it is further

**ORDERED** that the cross-motion is **DENIED**.

This constitutes the decision and order of the Court.

Dated: December 23, 2019



PETER P. SWEENEY, J.S.C.

HON. PETER P. SWEENEY, J.S.C.

KINGS COUNTY CLERK  
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