

<b>Hernandez v Westchester County Dept. of Transp.</b>
2019 NY Slip Op 34481(U)
August 30, 2019
Supreme Court, Westchester County
Docket Number: Index No. 66577/2017
Judge: Sam D. Walker
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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  
WESTCHESTER COUNTY  
PRESENT: HON. SAM D. WALKER, J.S.C.**

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DIANE HERNANDEZ,

Plaintiff,

-against-

**DECISION & ORDER**  
Index No. 66577/2017  
Seq# 1

WESTCHESTER COUNTY DEPARTMENT OF  
TRANSPORTATION, LIBERTY LINES TRANSIT,  
INC., and COURTNEY WILLIAMS,  
Defendants.

----- X  
The following papers were considered on the defendants' motion pursuant to CPLR 3212, seeking summary judgment to dismiss the action:

Notice of Motion/Affirmation/Exhibits A-D	1-6
Affirmation in Opposition	7
Reply Affirmation	8

Based on the foregoing submissions the motion for summary judgment is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Diane Hernandez ("Hernandez"), commenced the action on October 6, 2017, by filing a summons and complaint to recover damages for personal injuries she allegedly sustained in a motor vehicle accident that occurred on December 12, 2016 at the intersection of Willet Avenue and Highland Street in Port Chester, New York. The plaintiff was a passenger in the vehicle driven by Karen Wynn ("Wynn") and owned by the Village of Port Chester, when that vehicle collided with a bus traveling on Willet Avenue, driven by

the defendant, Courtney Williams ("Williams") and owned by the defendant, Liberty Lines Bus operated by the County of Westchester.

Williams testified that he was traveling northbound on Willet Avenue, when he came to the intersection of Willet Avenue and Highland Street. He testified that there was no stop sign controlling Willet Avenue, but there was a stop sign controlling Highland Street. He testified that at the last moment, Wynn pulled out in front of the bus and there was nothing he could do to avoid the collision.

Hernandez testified that she was a passenger in the vehicle driven by Wynn, that there was a stop sign at the intersection controlling the vehicle driven by Wynn, but no stop sign for the bus driven by Williams. Wynn came to a stop at the corner of Willet and Highland for a couple of seconds, then proceeded into the intersection and the bus operated by Williams struck their vehicle on the driver's side. Hernandez testified that she saw the bus coming at her and she screamed for Wynn to stop her vehicle, but Wynn could not stop in time to avoid the collision.

A passenger on the bus, Sharon Stapleton ("Stapleton") also testified that Highland Street is controlled by a stop sign and the bus was proceeding along Willet Avenue, when the other vehicle came out of nowhere and struck the side of the bus. Stapleton stated that the Williams attempted to stop and swerve out of the way, but it was too late.

The defendants now file the instant motion seeking summary judgment to dismiss the action against them. They argue that they are entitled to summary judgment as a matter of law because Williams was not negligent in the operation of the vehicle and the evidence demonstrates that Wynn was negligent in her failure to yield to the right of way to Williams in violation of Vehicle and Traffic Law § 1142(a) and such failure was the sole

proximate cause of the accident. The plaintiff opposes the motion arguing that there are issues of fact as to how the accident occurred and the moving papers fail to create a prima facie showing that the defendants have a right to judgment as a matter of law. The plaintiff asserts that there are inconsistencies in Williams' testimony as to an incline in the road as well as where in the intersection the impact occurred, creating issues of fact. The plaintiff asserts that Williams contributed to the accident and had a duty of reasonable care to avoid contact, even though he had the right of way. She contends that Williams was traveling at a high rate of speed and failed to see a vehicle he should have seen. The defendants reply to the opposition refuting the plaintiff's contentions.

#### DISCUSSION

A party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

In order to establish a prima facie entitlement to judgment as a matter of law, it is incumbent upon the movant to come forward with evidentiary proof, in admissible form, demonstrating the absence of any triable issues of fact on the issue of liability (*see Franks v G & H Real Estate Holding Corp.*, 16 AD3d 619 [2d Dept 2005], *citing, Welwood v Association for Children with Down Syndrome*, 248 AD2d 707, 708 [2d Dept 1998]).

The evidence demonstrates the plaintiff's prima facie entitlement to judgment as a matter of law by establishing that Wynn's vehicle proceeded into an intersection controlled by a stop sign without yielding the right of way to the approaching vehicle (*see Vehicle and*

Traffic Law § 1142[a]), thereby shifting the burden to the defendant to demonstrate the existence of a factual issue requiring a trial (see *Goemans v County of Suffolk*, 57 AD3d 478, 479 [2d Dept 2008] ["the County established its prima facie entitlement to judgment as a matter of law by evidence that Sellers failed to yield the right-of-way upon entering the subject intersection in violation of Vehicle and Traffic Law § 1142(a) and thus was negligent as a matter of law."]; *Thompson v Schmitt*, 902 NYS.2d 606, 607 [2d Dept 2010] [Plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating "that the defendant driver, who was faced with a stop sign at the intersection ...negligently entered the intersection without yielding the right of way to his approaching vehicle and that this was the sole proximate cause of the accident"])

The fact that Wynn was required to stop her vehicle at a stop sign, while Williams' route of travel was not encumbered by a requirement to stop, established that Wynn failed to yield the right of way to Williams<sup>1</sup> (*Id.*; see also, *Szczotka v Adler*, 291 AD2d 444 [2d Dept 2002])<sup>2</sup>. "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" (see *Gergis v Miccio*, 39 AD3d 468, 468 [2d Dept 2007]; see also *Maliza*

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VTL §1142 specifically provides that "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" (VTL § 1142[a]).

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In *Szczotka v Adler*, the plaintiff moved for summary judgment on the issue of liability asserting that the defendant failed to stop at the stop sign. In opposition, the defendant asserted that he did stop at the stop sign and that the plaintiff must have been speeding. The Second Department held that "[r]egardless of whether the defendant stopped at the stop sign, the plaintiff established that the defendant violated Vehicle and Traffic Law § 1142(a), by failing to yield the right of way to her" (*Szczotka v Adler*, 291 AD2d 444 [2d Dept 2002]).

*v Puerto-Rican Transp. Corp.*, 50 AD3d 650 [2d Dept 2008]).

Furthermore, Wynn was obligated to see that which by the proper use of her senses she should have seen, and Williams, as the driver with the right-of-way, was entitled to anticipate that Wynn would obey traffic laws which required her to yield (*see Moussouros v Liter*, 22 AD3d 469, 470 [2d Dept 2005]).

In opposition, the affirmation submitted contending that there are inconsistencies in Williams' testimony as to an incline in the road as well as where in the intersection the impact occurred and the responsible party, fails to create issues of fact. Williams testified that the roadway in the location where the accident occurred is leveled, his vision was not blocked by anything and he had a clear view of Highland Street as he approached the intersection. This is corroborated by the video surveillance of the accident submitted by the defendants, which shows that Wynn drove in front of the bus as it approached, causing the bus to collide with Wynn's vehicle. The video also show that he was not traveling at a high rate of speed and Wynn's vehicle was not moved a car length as a result of the impact, as asserted by the plaintiff. There is also no inconsistency as to where the accident occurred. None of the testimony provided by any of the parties presents a conflicting or different versions of the accident sufficient to create an issue of fact as to the proximate cause of the accident.

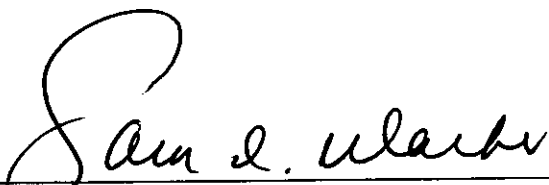
Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted; and it is further

ORDERED that the plaintiff's claims in this action against all defendants are dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
August 30, 2019

  
HON. SAM D. WALKER, J.S.C.