

**Savage v Willett**

2019 NY Slip Op 34821(U)

September 25, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 605553/2016

Judge: Linda Kevins

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SHORT FORM ORDER

INDEX No.605553/2016  
CAL No. \_\_\_\_\_

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 29 - SUFFOLK COUNTY

**PRESENT:**

Hon. LINDA KEVINS  
Justice of the Supreme Court

-----X

LINDA K. SAVAGE,  
Plaintiff,

-against-

SCOTT E. WILLETT and BRIAN GERARD WILLETT,  
Defendant(s).

-----X

**DECISION AND ORDER**  
MOTION Seq. # 001 - MG

The following papers have been read on this Motion by Defendants:

Notice of Motion, Affirmation, Memorandum of Law & Exhibits .....	1
Affirmation in Opposition & Exhibits .....	2
Reply Affirmation .....	3

Upon the foregoing papers, it is Ordered that this Motion is decided as follows:

Defendants seek an Order granting the Defendants, Scott E. Willett (hereinafter "Defendant SE Willett") and Brian Gerard Willett (hereinafter "Defendant BG Willett"), Summary Judgment pursuant to CPLR 3212, dismissing the complaint. Plaintiff opposes such application.

This is an action to recover damages for personal injuries allegedly sustained by Plaintiff Linda K. Savage as a result of a two-vehicle accident. Defendants now move for summary

judgment to dismiss the complaint on the issue of liability arguing that Plaintiff was negligent per se when making a left turn after entering into an intersection while it was unsafe to do so in violation of Vehicle and Traffic Law §§ 1141, 1142 and 1172. In support of the motion, Defendants submit, among other things, an affirmation of counsel, memorandum of law, copies of the pleadings and deposition transcripts of Plaintiff and Defendants. Plaintiff has submitted an affirmation in opposition, photographs, police accident report and verified bill of particulars.

It is well settled that the proponent of a summary judgment motion bears the initial burden of establishing his or her entitlement to judgment, as a matter of law, in his or her favor by offering admissible evidence sufficient to eliminate any material issues of fact from the case (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of any opposition thereto (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant has made the requisite showing, the burden then shifts to the opposing party, requiring him or her to present admissible evidence and facts sufficient to require a trial on any issue of fact (*CPLR 3212 [b]*; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*). On such a motion, the Court is charged with determining whether issues of fact exist while viewing any evidence in a light most favorable to the nonmoving party; the Court is not responsible for resolving issues of fact or determining matters of credibility (see *Chimbo v Bolivar*, 142 AD3d 944 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (see *Chimbo v Bolivar*, *supra*; *Beneratos v Comerford*, 78 AD3d 730 [2d Dept 2010]). A plaintiff may obtain partial summary judgment on the issue of liability without demonstrating the absence of his or her own comparative fault (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]).

The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards constitutes negligence per se (see *Ferrara v Castro*, 283 AD2d 392 [2d Dept 2001]). Moreover, an operator of a motor vehicle has a "common-law duty to see that which [he or she] should have seen through the proper use of [his or her] senses" (*Moussouros v Liter*, 22 AD3d 469 [2d Dept 2005]). "The operator of a vehicle with the right-of-way is entitled to assume that the opposing driver will obey the traffic laws requiring him or her to yield" (*Gause v Martinez*, 91 AD3d 595 [2d Dept 2012]).

Here, Defendants allege the Plaintiff violated the following 3 sections of the Vehicle & Traffic Law:

§1142 entitled, Vehicle entering stop or yield intersection, in relevant part, provides:

(a) 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.

§1141 entitled, Vehicle Turning Left, provides:

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard. (emphasis added).

§1172 entitled, Stop Signs and Yield signs, in relevant part, provides:

(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

Vehicle and Traffic Law § 1141 mandates a vehicle intending to turn left within an intersection yield the right of way to any vehicle approaching the intersection. The vehicle intending to turn left must yield to those vehicles which are within the intersection or so close to it that they may constitute an immediate hazard (*Aponte v Vani*, 155 AD3d 929 [2d Dept 2017]). When a driver attempts to make a left turn when it is not reasonably safe to do so, into the path of an oncoming vehicle, that driver is in violation of the Vehicle and Traffic Law (*Attl v Spetier*, 137 AD3d 1176 [2d Dept 2016]). Vehicle and Traffic Law § 1142 requires a driver approaching a stop sign to stop in accordance with Vehicle and Traffic Law § 1172 before yielding the right of way to a vehicle entering the proceeding intersection so closely "as to constitute an immediate hazard." If a driver fails to yield this right of way after stopping at a stop sign, then he or she is negligent as a matter of law (*Miller v County of Suffolk*, 163 AD3d 954 [2d Dept 2018]).

Here, it is undisputed the accident occurred on April 14, 2013, when a vehicle, operated by Defendant BG Willett and owned by Defendant SE Willett, struck Plaintiff's vehicle at the intersection of Hallock Landing Road and Mark Drive, Town of Brookhaven, Suffolk County, New York. It is further undisputed that at the incident location Hallock Landing Road is a two-way street with one lane of travel in each direction and divided by a double yellow line. Immediately prior to the accident, it is also undisputed that Plaintiff was traveling eastbound on

Mark Drive towards the intersection and Defendant BG Willett was traveling southbound on Hallock Landing Road.

Defendant BG Willett alleges that he was traveling in the right of way and the Plaintiff, whose direction of travel was controlled by a stop sign, entered the subject intersection, and made a left turn causing the vehicles to collide. As provided in Plaintiff's and Defendant BG Willett's depositions, it is undisputed that Plaintiff was unable to complete her left turn without colliding with the front of Defendant BG Willett's vehicle and is compelling evidence of the immediate hazard created by Plaintiff's vehicle (*see Shashaty v Gavitt*, 158 AD3d 830 [2d Dept 2018]; *Giwa v Bloom*, 154 AD3d 921 [2d Dept 2017]; *see generally Al-Mamar v Terrones*, 146 AD3d 737 [2d Dept 2017]). Thus, it is alleged, Plaintiff was required to yield to Defendant BG Willett's oncoming vehicle, regardless of which vehicle entered the intersection first, since Defendant BG Willett was entitled to anticipate Plaintiff would obey the requisite traffic laws (*see Shashaty v Gavitt, supra; Giwa v Bloom, supra; Hatton v Lara*, 142 AD3d 1047 [2d Dept 2016]).

Here, Defendants having met their initial burden on the motion, the burden shifted to plaintiff to raise a triable issue of fact (*see Zuckerman v City of New York, supra*). Defendants' submissions are sufficient to make a prima facie showing of entitlement to summary judgment on the issue of liability and negligence. (*see Kastritsios v Marcello*, 84 AD3d 1174 [2d Dept 2011]; *Bernier v Torres*, 79 AD3d 776 [2d Dept 2010]; *Mandel v Benn*, 67 AD3d 746 [2d Dept 2009], *Alvarez v Prospect Hosp., supra*). The burden, then, shifted to Plaintiff to offer a non-negligent explanation for the accident sufficient to raise a triable issue of fact (*see Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 AD3d 368 [2d Dept 2006]; *Rainford v Han*, 18 AD3d 638 [2d Dept 2005]).

Here, Plaintiff in her deposition testimony, as set forth in Plaintiff's Affirmation in Opposition stated in relevant part:

[t]hat she made a full stop at the stop sign on Mark, where she stayed for a minute or two. She first looked to the left, observing 350 o 400 feet down Hallock, for a minute or two, and did not see any oncoming traffic. She then looked to the right, where she could see down the road approximately a hundred yards and observed a couple of cars coming so she waited for those cars to pass. After she looked to the right, she proceeded to turn left at a speed of approximately ten to fifteen m.p.h. because she did not see any cars coming and was at least halfway through the turn when the accident occurred. Approximately two seconds elapsed from the time that she started her turn until the impact took place. (*Internal citations omitted*)

Based upon the foregoing testimony, Plaintiff has not provided any allegations of fact related to Defendant's speed sufficient to raise a triable issue of fact. In opposition, Plaintiff has not provided a non-negligent explanation for her failure to avoid impact with Defendant's

vehicle. The Defendants have established their prima facie entitlement to judgment as a matter of law by demonstrating that the Plaintiff driver violated Vehicle and Traffic Law § 1141 when she made a left turn directly into the path of the Defendants' vehicle when it was not reasonably safe to do so, and that this violation was the sole proximate cause of the accident. *Lebron v Mensah*, 161 AD3d 972 [2d Dept 2018].

Accordingly, the Defendants' request for an Order granting summary judgment in his favor and dismissing the complaint is Granted.

It is hereby,

**ORDERED**, that this application by Defendants Scott E. Willett and Brian Gerard Willett is GRANTED to the extent an Order granting summary judgment in their favor and dismissing the complaint is granted; and it is further

**ORDERED**, that Movant(s) is/are directed to immediately serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2105, upon the Suffolk County Clerk; and it is further

**ORDERED**, that upon Entry of this Order by the Suffolk County Clerk, Movant(s) is/are directed to serve, forthwith, a copy of this Order with Notice of Entry upon all parties and to promptly file the Affidavit(s) of Service with the Clerk of the Court.

The Court has considered the remaining issues and find them unavailing.

This constitutes the Decision and Order of this Court.

Dated: September 25, 2019  
Riverhead, New York

  
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HON. LINDA KEVINS  
J.S.C.

**X FINAL DISPOSITION    NON-FINAL DISPOSITION**