

**Turner v Corte**

2019 NY Slip Op 34854(U)

September 27, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 611622/2015

Judge: Linda Kevins

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INDEX No. 611622/2015  
CAL No. \_\_\_\_\_

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

**PRESENT:**

Hon. LINDA KEVINS  
Justice of the Supreme Court

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JENNIFER TURNER,

Plaintiff,

-against-

MIGUEL CORTE, E.K.T. CONSTRUCTION/REN,  
INC., ANTHONY J. RYAN, JR., and ANTHONY J. RYAN,

**DECISION AND ORDER**  
MOTION Seq. # 01 - MD

Defendants.

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

Notice of Motion, Affirmation, Memorandum of Law & Exhibits .....	1
Affirmation in Opposition & Exhibits by Defendants Miguel Corte and E.K.T. Construction/Ren, Inc.....	2
Affirmation in Opposition & Exhibits by Plaintiff Jennifer Turner .....	3
Reply Affirmation .....	4

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

Defendants, Anthony J. Ryan (hereinafter Defendant Ryan), and Anthony J. Ryan, Jr. (hereinafter Defendant Ryan, Jr.), seek an Order granting them summary judgment pursuant to CPLR 3212 dismissing the complaint. Plaintiff and Defendants, Miguel Corte (hereinafter Defendant Corte) and E.K.T. Construction/Ren, Inc. (hereinafter Defendant EKT), oppose such application. All parties have joined issue.

This is an action to recover damages for personal injuries, allegedly, sustained by Plaintiff Jennifer Turner as a result of a two-vehicle accident. Defendants Ryan and Ryan, Jr. now move for summary judgment to dismiss the complaint arguing that Defendant Corte 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. In support of the motion, Defendants Ryan and Ryan, Jr. submit, among other things, an affirmation of counsel, memorandum of law, copies of the pleadings and deposition transcripts of Plaintiff and Defendant Ryan Jr.. Plaintiff has submitted an affirmation in opposition and a photograph and Defendants Cortes and EKT have submitted an affirmation in opposition, photographs and Defendants Ryan and Ryan, Jr.'s Response to Preliminary Conference Order and Demand for Medical Reports. To date, Defendant Cortes has not appeared for a deposition in this case.

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 Litter*, 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 section 1141 of the Vehicle & Traffic Law:

§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).

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]).

Here, it is undisputed the accident occurred on March 22, 2015, when a vehicle operated by Defendant Cortes and owned by Defendant EKT, struck a vehicle operated by Defendant Ryan Jr. and owned by Defendant Ryan. It is also undisputed that at the time of the accident, Plaintiff was a passenger in Defendant Ryan Jr.'s vehicle and the accident occurred at the intersection of South Ocean Avenue and Division Street, Town of Brookhaven, County of Suffolk, State of New York. It is further undisputed that, at the incident location South Ocean Avenue runs north and south with one lane in each direction and Division Street runs East and West, with one lane in each direction along with a turn left-hand turn lane and the the intersection is controlled by a traffic light.

Defendant Ryan Jr., in his deposition testimony (*Defendant Notice of Motion, Ex. D*), alleges that prior to the accident, he brought his vehicle to a complete stop for the light at the intersection of South Ocean and Division, and when the light governing his direction of travel turned green, he proceeded at a speed of approximately 5 miles per hour into the intersection where he observed the Defendant Cortes vehicle making a left turn into his vehicle from the opposite direction of travel on South Ocean Avenue. Defendant Ryan Jr. states that he was fully in the intersection when he observed Defendant Cortes' vehicle, he swerved in an attempt to avoid an impact, swerved again attempting to avoid a pole and was then impacted by the Corte vehicle. Defendant Ryan Jr. alleges it was the force of the Corte vehicle that then caused his vehicle to collide with the utility pole.

Plaintiff, in her deposition testimony (*Defendant Notice of Motion, Ex. G*), states in relevant part that she was a passenger in the vehicle driven by Defendant Ryan Jr. on March 22, 2015 at the time of the collision at the intersection of South Ocean Avenue and Division Street. Plaintiff alleges there is a traffic light at the intersection and that prior to the collision, she observed the traffic light governing their direction of travel illuminate green. Plaintiff also testified that at the time of the collision it was her, and Defendant Ryan Jr.'s, intention to continue straight on South Ocean Avenue and that the Defendant Ryan Jr.'s vehicle was only traveling approximately five miles per hour when they were impacted by the Defendant Corte's vehicle, however, she is unable to recall many details regarding the collision because she "must have blacked out or something."

Plaintiff and Defendant Cortes allege that Defendant Cortes, the operator of the second vehicle in the collision has not yet been deposed and the pretrial discovery phase is not yet complete. A court is authorized to deny a summary-judgment motion or grant a continuance thereof pending discovery when facts essential to justify opposition may exist but cannot then be stated. *6B Carmody-Wait 2d § 39:123*. CPLR 3212 (f) in relevant part states "[s]hould it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition

may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just. The Court may deny a Co-Defendant's Motion for Summary Judgment based on fact that both Co-Defendants had not been deposed and the pretrial discovery phase was not complete. *Harris v. McDowell*, 841 NY2d 218 (2007).

Here, Plaintiff and Defendants Cortes and EKT raise sufficient opposition to Defendants Ryan and Ryan Jr.'s application for summary judgment, in arguing that significant discovery, including, the deposition of Defendant Cortes, remains outstanding. The parties, in support of this opposition, argue that until the deposition of Defendant Cortes is completed the Court cannot reasonably determine that there are no triable issues of fact. Plaintiff and Defendants Cortes and EKT allege that it is likely that the deposition of Defendant Cortes will raise additional issues of fact regarding Defendant Ryan Jr.'s actions leading up to the two collisions, one with Defendant Cortes and the second with the utility pole.

Accordingly, the application by Defendants Ryan and Ryan Jr. seeking summary judgment is Denied, without prejudice as premature, pending further disclosure with leave to renew at a later date and the parties are directed to appear at a November 19, 2019, compliance conference.

It is hereby,

**ORDERED**, that this application by Defendants Anthony J. Ryan, Jr. and Anthony J. Ryan is **DENIED** to the extent an Order granting Summary Judgment in their favor and dismissing the complaint is Denied without prejudice as premature, pending further disclosure with leave to renew at a later date; and it is further

**ORDERED**, that all Parties' Counsel and if no counsel then the Parties, are directed to appear before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on Tuesday, **NOVEMBER 19, 2019, at 9:30 A.M.**, for a **compliance conference and scheduling for the completion of discovery including the scheduling of Defendant Miquel Corte's deposition**; and it is further

**ORDERED**, that non-appearance will not be countenanced by the Court and may subject the non-appearing Party to one or more of the sanctions pursuant to 22 NYCRR §§ 202.27 and 130-2; and it is further

**ORDERED**, that at the call of the calendar, if any Party does not appear or proceed or announce their readiness to proceed, the Court shall consider an Order pursuant to **22 NYCRR § 202.27 as follows: (a) if the Plaintiff appears but the Defendant does not, the Court shall consider granting judgment by default and order an inquest; (b) if the defendant appears but the Plaintiff does not, the Court shall consider a dismissal of the action and order a severance of counterclaims; and (c) if no Party appears, the Court shall make such order as appears just**; and it is further

**ORDERED**, that the Parties and their Counsel, if any, comply with Part 29 Court Rules, [https://www.nycourts.gov/courts/10jd/suffolk/SC\\_Part\\_Rules/Kevins.pdf](https://www.nycourts.gov/courts/10jd/suffolk/SC_Part_Rules/Kevins.pdf); 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 finds them unavailing.

This constitutes the Decision and Order of this Court.

Dated: September 27, 2019  
Riverhead, New York



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HON. LINDA KEVINS  
J.S.C.

\_\_\_\_\_ **FINAL DISPOSITION**      **X**   **NON-FINAL DISPOSITION**