

**Webley v Lara**

2019 NY Slip Op 35170(U)

September 19, 2019

Supreme Court, Bronx County

Docket Number: Index No. 28261/2018E

Judge: ShawnDya L. Simpson

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART: 17

WEBLEY, JOYCE

Index No. 0028261/2018E

-against-

Hon. Shawndya L. Simpson

LARA, JEAN

Justice Supreme Court

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, (Seq. No. 1) for  
**SUMMARY JUDGMENT LIABILITY**, noticed on **April 01 2019**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is *granted in accordance with the attached decision.*

Motion is Respectfully Referred to Justice:  
Dated:

Dated: 9/23/19

Hon. Shawndya L. Simpson, T.J.C.

- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
- 2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 17

-----X  
JOYCE WEBLEY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28261/2018E

JEAN LARA,

Defendant.

-----X

Shawndya L. Simpson, J.:

**INTRODUCTION**

On May 3, 2018, plaintiff pedestrian is alleged to have been struck by defendant’s vehicle as she was walking at the intersection of W. Hartsdale avenue and S. Central avenue, in Greenburgh county. Plaintiff alleges that as she was at the crosswalk of this intersection walking north bound on S. Central avenue she was struck by defendant’s vehicle which resulted in her serious personal injury. By notice of motion dated March 8, 2019, and the affirmation and exhibits submitted in support thereof along with all the pleadings and proceedings heretofore, plaintiff seeks summary judgment against defendant on the issue of liability. Plaintiff asserts that defendant is solely liable for striking her and causing the motor vehicle accident. Defendant filed an affirmation in opposition dated April 3, 2019. Plaintiff filed a reply dated April 4, 2019.

In support of the motion, plaintiff submits a police accident report, summons, complaint, answer with discovery demands, bill of particulars, and an affidavit from plaintiff. In opposition, the defendant submits his counsel’s affirmation. No exhibits or other documents are attached or submitted along with defendant’s counsel’s affirmation in opposition. For the foregoing reasons, after review and consideration of the filings and proceedings, plaintiff’s motion for summary judgment on the issue of liability against the defendant is granted.

### DISCUSSION

Plaintiff has established her entitlement to summary judgment on the issue of liability against the defendant (*see Bajrami v. Winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1<sup>st</sup> Dept 2017]). It is undisputed that while plaintiff was walking north bound on South Central avenue on the crosswalk at the intersection by West Hartsdale avenue, she was struck by a vehicle owned and operated by defendant that was traveling west bound on Hartsdale avenue approaching South Central avenue. Defendant's vehicle is said to have struck plaintiff after failing to yield to her the right of way. Plaintiff is said to have crossed the intersection with a signal that showed a "white man" walking indicating that traffic was to stop for her to cross. It is said that plaintiff did not have any warning that defendant would proceed through the cross-walk and strike the plaintiff. Plaintiff argues that defendant does not have a non-negligent excuse for the accident to relieve him of liability. In the certified police report submitted by plaintiff it is said that defendant admitted that as he was coming to a stop for the yellow light turning red when his foot slipped off the break causing his vehicle to roll forward and strike plaintiff. Plaintiff's motion invites an explanation from the defendant as to the cause of the accident.

However, no contrary version of the facts in the form of admissible evidence is offered by the defense to counter the instant motion. It is undisputed that defendant struck the plaintiff as she proceeded on the cross-walk with the right of way and that defendant is solely at fault for the accident. Under these circumstances, plaintiff is entitled to summary judgment on the issue of liability against the defendant (*see Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 [1975]).

Vehicle and Traffic Law (VTL) section 1111 (a) (1) states as to traffic control devices and green indications that "[t]raffic, except pedestrians, facing a steady circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn.

Such traffic, including when turning right or left, shall yield the right of way to other traffic lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.”

Section 1111 (a) (3) of the VTL states that “ [u]nless otherwise directed by a pedestrian-control signal as provided in section eleven hundred twelve, pedestrians facing any steady green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.” Section 1112 (a) of the VTL states “[w]hen pedestrians are controlled by pedestrian-control signals exhibiting the words “WALK” or “DON’T WALK”, or exhibiting symbols of a walking person or upraised hand, such signals shall indicate and apply to pedestrians as follows: (a) Steady WALK or walking person. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by other traffic.”

As to due care and signals, section 1146 of the VTL provides that “. . . every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary.” Section 1151 of the VTL states that “[w]hen traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk on the roadway upon which the vehicle is traveling.”

Section 1163(a) of the VTL provides that no person shall “turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.” Violation of the VTL constitutes negligence *per se*, as a matter of law (*see Baldwin v. Degenhardt*, 82 N.Y.2d 867 [1993]; *Elliott v. City of New York*, 95 N.Y.2d 730, 734, [2001]; *Cruz v. City of New York*, 13 A.D.3d 254 [App. Div., 1<sup>st</sup> Dept. 2004]). Here, a violation of the VTL is established.

New York City's Traffic Rules and Regulations (RCNY) § 4-03 (c) (1) provides that where pedestrians are facing a control signal of a steady walking person the pedestrian “may proceed across the roadway in the direction of such signal, and other traffic must yield the right of way to such pedestrians” (34 RCNY § 4-03 (c) (1)). Section 4-03 of RCNY § (a) (1) (i) states that vehicular traffic facing a green light alone “may proceed straight through or turn right or left unless a sign at such place prohibits any such movement. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited” (34 RCNY § 4-03(a)(1)(i)). A violation of these rules provides further evidence of negligence.

Based on the plain language of the statutes, a violation is clear when a driver fails to yield to a pedestrian with the right of way and that conduct results in a collision. The undisputed admissible evidence demonstrates that plaintiff had the right of way in the crosswalk as she had the traffic light as well as the pedestrian walk signal in her favor. Plaintiff herein has provided a *prima facie* showing of entitlement to summary judgment (*see Jenkins v. Alexander*, 9 A.D.3d 286 [App. Div., 1<sup>st</sup> Dept. 2004]). However, no admissible evidence is offered in opposition. “Facts appearing in the movant’s papers which the opposing party does not controvert, may be deemed to be admitted” (*Kuehne & Nagel, Inc. v. Baiden*, *supra* at 544.; *Tortorello v. Carlin*, 260 A.D.2d 201 [App. Div., 1<sup>st</sup> Dept. 1999]), and defendant did not rebut plaintiff’s assertion with any evidence to undermine the claim of culpability. As stated, defendant did not attach firsthand sworn testimony to controvert plaintiff’s evidence that she had the right of way, that defendant unreasonably caused and is solely at fault for the accident.

Additionally, plaintiff’s motion was not premature due to the lack of discovery because the information as to why defendant’s car collided reasonably rests within the drivers’ own knowledge

(see *Castaneda v. DO&CO N.Y. Catering, Inc.*, 144 A.D.3d 407 [App. Div., 1<sup>st</sup> Dept 2016]; *Johnson v. Phillips*, 261 A.D.2d 269, 272 [App. Div., 1<sup>st</sup> Dept. 1999]), *Rodriguez v. Garcia*, 154 A.D.3d 581 [App. Div., 1<sup>st</sup> Dept 2017]). The evidence in support of the motion has established a *prima facie* case that plaintiff was not at fault for the accident and that defendant is the sole cause for the collision. Consequently, the motion for summary judgment against the defendant on the issue of liability is granted.

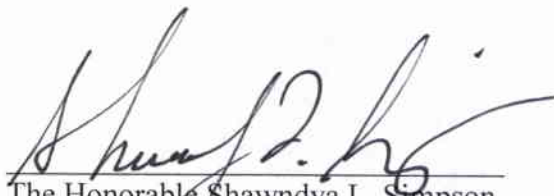
### CONCLUSION

Accordingly, it is:

ORDERED, that plaintiffs' motion for summary judgment on the issue of liability against the defendant for the subject accident is granted. A trial on the issues of damages and whether the threshold for serious injury has been established is ordered.

This constitutes the decision and order of the court.

Dated: Bronx, New York  
September 19, 2019



The Honorable Shawndya L. Simpson  
Justice of the Supreme Court