

**Elan v Johnson**

2020 NY Slip Op 34474(U)

February 21, 2020

Supreme Court, Orange County

Docket Number: EF004124/2018

Judge: Steven I. Milligram

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This opinion is uncorrected and not selected for official publication.

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  
COUNTY OF ORANGE

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GINA ELAN

Plaintiff,

-against-

**DECISION AND ORDER**

WALTER J. JOHNSON now known as GIUSEPPE  
JOHNSON TAVERNA and CARMELO TAVERNA  
Defendants.

INDEX NO.: EF004124/2018  
Motion Date: 2/4/2020  
Sequence No.: 1

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**MILLIGRAM, J.**

Upon review of the documents e-filed in connection with plaintiff's motion for an Order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability against defendant, for the reasons set forth below, plaintiff's motion is granted.

**Background and Procedural History**

This action arose from a motor vehicle accident that occurred on April 17, 2016 at approximately 2pm in the vicinity of South William Street and South Lander Street. in the City of Newburgh, New York. Plaintiff was a passenger in a vehicle operated by her son, Jeaneste Pierre. Plaintiff's vehicle was traveling on South William Street. There is no traffic control device for purposes of controlling vehicular traffic traveling on South William at its intersection with South Lander.

The other vehicle involved in the incident was owned by defendant Carmelo Taverna and operated by defendant Walter J. Johnson, now known as Giuseppe Johnson Taverna. Defendant driver was operating his vehicle on South Lander approaching its intersection with South William. At that intersection, traffic on South Lander is controlled by a stop sign. Defendant

testified that he stopped at that stop sign, and, as his view was obstructed by parked vehicles, after stopping at that stop sign, he began to pull out slowly to cross South William. Defendant testified that he observed plaintiff's vehicle approaching him but believed that he had sufficient distance and time to safely cross the intersection. However, at approximately the midpoint of the intersection, the left front of defendant's vehicle came in contact with the passenger front side of plaintiff's vehicle.

Defendants filed a third-party action against the plaintiff's driver, Jeaneste Pierre, however, that matter was discontinued with prejudice.

Plaintiff filed the instant motion for summary judgment arguing that the defendant driver is solely liable to plaintiff for the happening of this accident.

#### Discussion

As a preliminary matter, contrary to defendants' arguments, a statement directly attributable to driver in a police report is admissible as an admission (see Harrinarain v Sisters of St. Joseph, 173 AD3d 983 [2d Dept 2019]; Brown v URS Midwest, Inc., 132 AD3d 936 [2d Dept 2015]). While entirety of the report may not be admissible, defendant's statement which was directly attributed to him is.

As a general matter, 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. [A] driver who has the right-of-way is entitled to anticipate that other drivers will obey traffic laws that require them to yield.

[A] driver with a right-of-way ... has a duty to use reasonable care to avoid a collision, and one "ho lawfully enters an intersection may ... be found partially at fault for an accident if that driver fails to use reasonable care to avoid a collision with another vehicle at an intersection. However, a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision (Fernandez v American United Transp., Inc., 177 AD3d 704, 706 [2d Dept 2019])[internal quotations and citations omitted].

The plaintiff established her prima facie entitlement to judgments a matter of law on the issue of liability by submitting evidence that traffic travelling on South Williams had the right of way and the defendants' vehicle proceeded into the intersection without yielding the right of way to the plaintiff's driver in violation of Vehicle and Traffic Law §1142. The defendant driver testified that when he stopped at the stop sign controlling defendant's travel on South Lander Street, his view was obstructed by parked cars. However, he was able to "inch" out into the intersection where he saw the plaintiff's vehicle. At that time, defendant testified that he thought he had enough room to successfully proceed and pulled into the intersection. Unfortunately, he did not, and the left fender, tire and driver's side of defendants' vehicle impacted the passenger side of plaintiff's vehicle. It is immaterial that defendant may have stopped at the stop sign before proceeding into the intersection, because he did not have the right of way to proceed (see Fernandez v American United Transp., Inc., 177 AD3d at 706; Zuleta v Quijada, 94 AD3d 876, 877 [2d Dept 2012]).

In opposition, defendants failed to raise a triable issue of fact with respect to the plaintiff driver's negligence and the plaintiff's alleged comparative fault (see Fernandez v American United Transp., Inc., 177 AD3d at 706). Plaintiff's driver testified that he first saw defendants' vehicle 2-3 seconds before the impact when it was "getting out of the stop sign;" he sounded his horn and swerved his vehicle to avoid the collision. Additionally, although a third-party action was commenced against the plaintiff's driver, defendant discontinued those claims with prejudice in effect waiving any potential argument in relation to the potential to diminish the extent of defendant's percentage of culpability.

Dated: February 21, 2020  
Goshen, New York

ENTER:

A handwritten signature in black ink, appearing to read 'SM', is written over a horizontal line.

HON. STEVEN I. MILLIGRAM, J.S.C.

TO: *All Counsel via NYSECF*