

**Bhatti v Connolly**

2020 NY Slip Op 35043(U)

March 30, 2020

Supreme Court, Westchester County

Docket Number: Index No. 55336/2019

Judge: Sam D. Walker

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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  
WESTCHESTER COUNTY  
PRESENT: HON. SAM D. WALKER , J.S.C.**

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UMER N. BHATTI and AISHA IKRAM,  
Plaintiff,

-against-

THOMAS M. CONNOLLY,  
Defendants.

**DECISION & ORDER**  
Index No. 55336/2019  
Seq# 2

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The following papers were considered on the plaintiffs’ motion pursuant to CPLR

3212, seeking summary judgment on the issue of liability:

Notice of Motion/Affirmation/Exhibits 1-5	1-7
Affirmation in Opposition	8
Reply Affirmation	9

Based on the foregoing submissions the motion for summary judgment is granted in part and denied in part.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs, Umer N. Bhatti (“Bhatti”) and Aisha Ikram (“Ikram”), commenced the action on April 8, 2018, by filing a summons and complaint to recover damages for alleged personal injuries sustained by Bhatti in a motor vehicle accident that occurred on May 19, 2018, at the intersection of State Route 6 and Clark Place, in the Town of Carmel in Putnam, New York, when Bhatti’s vehicle collided with the vehicle owned and operated by the defendant, Thomas M. Connolly (“Connolly”). Ikram has a derivative claim against Connolly.

Bhatti alleges that he was traveling southbound on State Route 6, when Connolly's vehicle, attempting to make a left turn from Clark Place onto northbound State Route 6, collided with his vehicle.

The plaintiffs, by their attorney, now file the instant motion seeking summary judgment against Connolly on the issue of liability. The plaintiffs argue that Connolly violated Vehicle and Traffic Law §§ 1142(a) and 1172, which violation constitutes negligence as a matter of law and such failure was the sole proximate cause of the accident. The plaintiff further argue that the defendant's affirmative defenses of comparative negligence should be dismissed.

Connolly, by his attorney, opposes the motion arguing that Bhatti was negligent in traveling straight through the intersection, despite having his right turn signal engaged and the plaintiffs have failed to submit admissible evidence in support of the motion because the transcripts are not signed, not notarized and no proof has been submitted that the transcripts were sent to the deponents for their review and signature, as required by CPLR 3116.

Connolly's attorney further argues that a party approaching an intersection with the right-of-way is not automatically entitled to summary judgment on the issue of liability and has a duty to exercise reasonable care to avoid a collision with the other vehicle, by keeping a proper lookout. The attorney asserts that there is an issue as to whether Bhatti had his right directional indicator on and violated VTL 1163.

In reply, the plaintiffs' attorney contends that the transcripts are admissible as evidence, since they were certified by a court reporter and the accuracy was not challenged by the parties. The attorney further asserts that Bhatti did not violate VTL 1163,

because that statute only refers to using an indicator when turning and Bhatti was not turning. Further, he argues that Connolly had a duty to wait for Bhatti to clear the intersection and Connolly's argument of Bhatti's comparative negligence is not a defense to summary judgment.

In support of her motion, the plaintiffs submit the parties' deposition transcripts, a copy of the certified police report, an attorney's affirmation and copies of the pleadings.

### DISCUSSION

A party moving for 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]; (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986])). To demonstrate its entitlement to relief, the moving party must come forward with evidentiary proof that establishes the absence of any material issues of fact, (*see McDonald v Mauss*, 38 AD3d 727, 728 [2d Dept 2007]). Once the moving party has established its prima facie entitlement to summary judgment, the burden shifts to the opposing party to submit evidentiary proof in admissible form to establish material issues of fact (*see Alvarez*, 68 NY2d at 324; *Winegrad*, 64 NY2d at 853).

With regard to the unsigned transcripts, the Second Department has found that unsigned transcripts submitted in support of a summary judgment motion, once certified by the stenographer and unchallenged in accuracy by the opponents, are admissible and should be considered by the Court, on the motion. (*Thomas v City of New York*, 124 AD3d 872 [2d Dept 2015]; *Montalvo v United Parcel Service, Inc.*, 117 AD3d 1004 [2d Dept 2014]). The deposition transcripts, although unsigned, were certified by the

stenographer/reporter. The Courts have further found that the motion proponents' unsigned depositions, submitted in support of their motions, were admissible under CPLR 3116(a), since they are submitted by the party deponents themselves and accordingly, are adopted as accurate by those deponents (*Pavane v Marte*, 109 AD3d 970 [2d Dept 2013]; *David v Chong Sun Lee*, 106 AD3d 1044 [2d Dept 2013]).

The evidence demonstrates the plaintiff's prima facie entitlement to judgment as a matter of law by establishing that Connolly'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 Connolly was required to stop his vehicle at a stop sign, while Bhatti's route of travel was not encumbered by a requirement to stop, established that the

defendant failed to yield the right of way to the plaintiff<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 v Puerto-Rican Transp. Corp.*, 50 AD3d 650 [2d Dept 2008]).

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

Therefore, by the evidence submitted, the plaintiffs have “demonstrated, prima facie, that [Connolly] was negligent in attempting to make the left turn when it was not reasonably safe to do so” (*Amerman v Reeves*, 148 AD3d 1632 [2d Dept 2017]). However, the Court declines to grant that part of the motion seeking dismissal of Connolly’s affirmative defense of comparative negligence. Connolly’s deposition testimony states that Bhatti’s right turn signal illuminated, indicating that he intended to make a right turn at the intersection. While that does not raise a triable issue of fact as to Connolly’s negligence, since he had a duty

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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]).

to yield to Bhatti's vehicle at the intersection, it raises a triable issue of fact as to whether Bhatti violated the standard of reasonable care expected of drivers and whether he "contributed to the occurrence of the accident by falsely manifesting an intention to turn right" (*Amerman v Reeves*, 148 AD3d 1632, 1633-1634 [4th Dept 2017]).

Accordingly, the plaintiffs' motion for summary judgment is granted in part and denied in part; and it is

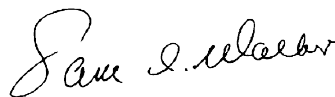
ORDERED that the portion of the plaintiffs' motion seeking summary judgment on the issue of liability, is granted; and it is further

ORDERED that the portion of the plaintiffs' motion seeking summary judgment dismissing the defendant's affirmative defense of comparative negligence or fault, is denied.

The parties are directed to appear before the Settlement Conference Part on a date to be later determined.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York  
March 30, 2020



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