

**Haniuk v McHale**

2020 NY Slip Op 35063(U)

August 13, 2020

Supreme Court, Orange County

Docket Number: Index No. EF000916-2019

Judge: Robert A. Onofry

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SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X  
ANDREW J. HANIUK,

Plaintiff,

- against -

MARY E. McHALE,

Defendant.  
-----X

To commence the statutory time period 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.

Index No. EF000916-2019

**DECISION and ORDER**

Motion Date: July 15, 2020

The following papers numbered 1 to 7 were read and considered on a motion by the Plaintiff, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- Ilori Affirmation- Exhibits 1-9 .....	1-3
Affirmation in Opposition- Nosowitz- Exhibit A .....	4-5
Affirmation in Reply- Ilori- Exhibit 1 .....	6-7

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

**Introduction**

The Plaintiff Andrew Haniuk commenced this action to recover damages arising from a motor vehicle accident. He moves for summary judgment on the issue of liability. The motion is granted.

**Factual/Procedural Background**

According to a police report of the accident, the Plaintiff was driving his vehicle west on

Route 97 in the Town of Highland, New York, when he was struck from the side, at an intersection, by a vehicle being driven by the Defendant who was proceeding north on Route 434. The Plaintiff had a flashing yellow light in his direction of travel. The Defendant had a flashing red light. The Defendant was ticketed at the scene.

The Plaintiff moves for summary judgment on the issue of liability.

In support of his motion, the Plaintiff submits an affirmation from counsel, Funsho Ilori.

Ilori argues that it may be determined as a matter of law that the Defendant was negligent in the happening of the accident, as she failed to stop for a flashing red light and violated the Plaintiff's right of way.

In opposition to the motion, the Defendant submits an affirmation from counsel, Cary Nosowitz.

Nosowitz notes that the Plaintiff, at his examination before trial, admitted that he was traveling at approximately 45-55 miles per hour at the time of this accident, and that this was in excess of the posted speed limit of 40 miles per hour. Further, that the roads were wet.

Nosowitz argues that the Court should accept the Plaintiff's estimate of his speed because he is a trained police officer.

Given the above, Nosowitz argues, the Plaintiff violated, *inter alia*, Vehicle and Traffic Law 1180(a), which provides that, "No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing."

Consequently, he asserts, there are questions of fact which prevent summary judgment, and the Plaintiff's motion should be denied.

In reply, the Plaintiff submits an affirmation from counsel, Funsho Ilori.

Ilori notes that, at the Defendant's examination before trial, she could not remember any of the relevant details of the day and accident in question, including whether the roads were wet, her rate of speed, whether there was a flashing red light in her direction of travel, where she was looking just prior to the collision, or the impact itself. Further, she testified, although she had seen a videotape of the accident, she could not tell if it was her vehicle involved because it was "blurry."

#### Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2<sup>nd</sup> Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2<sup>nd</sup> Dept. 2011].

There can be more than one proximate cause of an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. This is because each driver has a duty to exercise reasonable care under the circumstances to avoid an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. An operator of a motor vehicle traveling with the right-of-way has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles. *Fried v. Misser*, 115 A.D.3d 910 [2<sup>nd</sup> Dept. 2014]. Thus, a driver traveling with the right-of-way may nevertheless be found to have contributed to the happening

of the accident if he or she did not use reasonable care to avoid the accident. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. However, a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault. *Davis v. Commack Hotel, LLC*, 174 A.D.3d 501 [2<sup>nd</sup> Dept. 2019].

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. The driver with the right-of-way is entitled to anticipate that the other motorist will obey traffic laws which require him or her to yield. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014].

Vehicle and Traffic Law § 1113(b) requires that a vehicle entering an intersection controlled by a flashing yellow signal proceed with caution. Vehicle and Traffic Law § 1113(a) provides that a driver facing a red flashing signal must stop before entering the intersection, and that the right to proceed is subject to the rules applicable after making a stop at a stop sign. *Rabenstein v. Suffolk County Dept. of Public Works*, 131 A.D.3d 1145 [2<sup>nd</sup> Dept. 2015]. 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. *Rabenstein v. Suffolk County Dept. of Public Works*, 131 A.D.3d 1145 [2<sup>nd</sup> Dept. 2015]. However, a driver traveling with the right-of-way may nevertheless be found to have contributed to the happening of the accident if he or she did not use reasonable care to avoid the accident. *Rabenstein v. Suffolk County Dept. of Public Works*, 131 A.D.3d 1145 [2<sup>nd</sup> Dept. 2015].

Here, in support of his motion, the Plaintiff demonstrated a *prima facie* entitlement to judgment as a matter of law on the issue of liability.

In opposition, the Defendant failed to raise a triable issue of fact either as to her negligence in the happening of the accident, or as to the Defendant's.

Accordingly, and for the reasons cited herein, it is hereby,


ORDERED, that the motion is granted, and it is further,

ORDERED, that the parties are directed to appear for a conference to discuss how the matter shall proceed on the issue of damages on Tuesday, September 29, 2020, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York. If the courts are not open to the public at that time, a virtual conference will be scheduled.

The foregoing constitutes the decision and order of the court.

Dated: August 13, 2020  
Goshen, New York

ENTER

  
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