

**DiRenno v Nunez**

2020 NY Slip Op 35194(U)

November 20, 2020

Supreme Court, Westchester County

Docket Number: Index No. 60935/2019

Judge: Terry Jane Ruderman

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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 WESTCHESTER

-----X  
STEPHEN M. DiRENNO,

Plaintiff,

-against-

DECISION AND ORDER  
Motion Sequence No. 1  
Index No. 60935/2019

ROSA NUNEZ,

Defendant.

-----X  
RUDERMAN, J.

The following papers were considered in connection with plaintiff's motion for partial summary judgment on the issue of liability pursuant to CPLR 3212:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits 1 - 5	1
Affirmation in Opposition	2
Reply Affirmation	3

This personal injury action arose out of a motor vehicle accident occurring at approximately 6:30 p.m. on February 24, 2018 at the intersection of Manhattan Avenue and Tarrytown Road in Greenburgh, New York. The complaint alleges that plaintiff Stephen DiRenno was traveling west on Tarrytown Road and attempting to continue straight through the intersection when the vehicle operated by defendant Rosa Nunez, which had been traveling east on Tarrytown Road, attempted to make a left turn onto Manhattan Avenue and collided with plaintiff's vehicle. The subject intersection was controlled by a traffic light at the time of the incident, which both parties state was green for their respective direction of travel.

Plaintiff moves for partial summary judgment on the issue of defendant's liability, arguing that he was traveling with the right of way when defendant's vehicle collided with his. In support of his motion, plaintiff submits his and defendant's deposition transcripts as well as the certified police accident report regarding the subject accident. Defendant testified that, at the subject location, there were three lanes of traffic going each direction, one of which was dedicated to left turns only. She further testified that she was stopped at a red traffic light in the east-bound, left turn lane for approximately five to six minutes waiting to turn onto Manhattan Avenue, and that

when the light turned green, she commenced her left turn. She also stated that she could see approximately one-half mile down the road and did not see any moving traffic coming toward her. Notably, defendant testified that she never saw plaintiff's vehicle before impact, and that the front of her vehicle hit the driver's side front wheel well of plaintiff's vehicle in the right lane of Tarrytown Road.

At plaintiff's deposition, he testified that he was traveling in the right lane on Tarrytown Road, and that the traffic light controlling the subject intersection was green when he first observed it and remained green until the time of the incident. Additionally, he indicated that, when he saw defendant begin her left turn toward him, he braked and steered to the right in an attempt to avoid the collision but was unsuccessful.

Plaintiff contends that defendant violated Vehicle and Traffic Law § 1141 by failing to yield the right of way to him before turning left through the intersection. Therefore, he takes the position that defendant was negligent per se, establishing his prima facie entitlement to judgment as a matter of law. Based on the same arguments, plaintiff also seeks dismissal of defendant's affirmative defense of comparative negligence.

In opposition, defendant relies on the same deposition transcripts and argues that questions of fact exist to defeat summary judgment. Defendant argues that plaintiff was not yet in the intersection when she began her left turn, and therefore a question of fact exists as to whether plaintiff was so close to defendant as to constitute an immediate hazard.

In reply, plaintiff observes that defendant testified to not seeing his vehicle at any time before the impact, and argues that any allegation of his negligent operation of his vehicle is speculative and without merit. He also takes the position that it is irrelevant which vehicle entered the intersection first because, in either event, he had the right of way and was entitled to assume that defendant would yield. Finally, plaintiff contends that an allegation that plaintiff was comparatively negligent is not a defense to summary judgment.

#### Analysis

"The driver of a vehicle intending to turn to the left within an intersection ... 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" (Vehicle and Traffic Law § 1141). Here, it is undisputed that plaintiff had the right of way entering the subject intersection, therefore,

he was entitled to assume that defendant would obey traffic laws and yield to him (*see Cox v Weil*, 66 AD3d 634 [2d Dept 2009]). Plaintiff has established a prima facie case of defendant's negligence through both parties' depositions and the certified police accident report, which demonstrate that defendant failed to yield the right of way to plaintiff when attempting to make a left turn through the intersection, causing the collision.

Defendant failed to raise a triable issue of fact in opposition regarding her negligence. Her assertion that plaintiff was not yet in the intersection when she began her left turn is speculative since she testified that she did not see his vehicle before the collision, although she could see one-half mile down the road (*see Fernandez v American United Transp., Inc.*, 177 AD3d 704, 707 [2d Dept 2019]). Moreover, even if plaintiff was not yet in the intersection when defendant initiated her turn, this would be insufficient to defeat summary judgment. Based on the testimony of both parties and the nature of the impact – that the front of defendant's vehicle struck the side of plaintiff's vehicle – it is apparent that plaintiff's vehicle was close enough to defendant to constitute an immediate hazard as a matter of law (*see Vehicle and Traffic Law* § 1141).

Defendant also cites to case law holding that a plaintiff's negligence, such as excessive speed or failure to take reasonable care to avoid the collision, could create a triable issue of fact. However, she has provided no evidence to establish that such circumstances were present here. To the contrary, defendant's testimony that she did not see plaintiff's vehicle before the impact negates any claim that plaintiff was traveling at an excessive rate of speed or was otherwise comparatively negligent (*see Fernandez*, 177 AD3d at 707).

Plaintiff has established prima facie entitlement to summary judgment dismissing defendant's affirmative defense of comparative negligence through his testimony that he proceeded with caution into the intersection and attempted to avoid defendant's vehicle as she unexpectedly initiated her turn. Defendant has not submitted any evidence creating an issue of fact on this point, therefore, the affirmative defense of comparative negligence is dismissed (*see Krajniak v Jin Y Trading, Inc.*, 114 AD3d 910 [2d Dept 2014]).

Based upon the foregoing, it is hereby,

ORDERED that plaintiff's motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that defendant's affirmative defense of comparative negligence is dismissed; and it is further

ORDERED that all parties are directed to appear in the Settlement Conference Part to schedule a damages trial, on a date and time of which they will be notified by that part.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York

November 20, 2020



HON. TERRY JANE RUDERMAN, J.S.C.