

**Borden v Storms**

2020 NY Slip Op 35213(U)

October 26, 2020

Supreme Court, Orange County

Docket Number: Index No. EF007576-2019

Judge: Sandra B. Sciortino

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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

-----X  
**SEAN BORDEN,**

Plaintiff,

-against-

**DIANE STORMS,**

Defendant.  
-----X

**SCIORTINO, J.**

**DECISION AND ORDER**  
**INDEX NO.: EF007576-2019**  
**Motion Date: 10/1/2020**  
Sequence No. 1

The following papers numbered 1 to 10 were considered in connection with the plaintiff's application for partial summary judgment on the issue of liability:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation (Delancey)/Exhibits 1-6	1 - 8
Affirmation in Opposition (Parlman)	9
Reply Affirmation (Delancey)	10

**Background and Procedural History**

This personal injury action arises out of a motor vehicle accident that took place on September 18, 2018 at the intersection of Crystal Run Crossing and the on-ramp to Route 17 Westbound in the Town of Wallkill in Orange County. Plaintiff commenced this action by filing a Summons and Complaint (Exhibit 1) on September 23, 2019. In the Complaint, the plaintiff asserts that, on the day of the accident, the vehicle he was operating came into contact with the vehicle owned and operated by the defendant. Plaintiff alleges that the collision and his resulting injuries were caused by the negligence of defendant, occasioned, in part, when defendant failed to obey a traffic control device at the intersection where the impact occurred and violated the rules of the road

making a left turn. Defendant interposed a Verified Answer on October 22, 2019. (Exhibit 2)

Plaintiff served a Verified Bill of Particulars dated November 18, 2019. (Exhibit 3)

By Notice of Motion filed September 2, 2020, plaintiff seeks partial summary judgment on the issue of liability on the ground that the defendant's actions in entering the intersection and turning left without regard to oncoming traffic and in failing to yield the right-of-way to plaintiff, constituted a violation of Vehicle and Traffic Law §1141(a) and constitute negligence as a matter of law.

In support of his motion, plaintiff appends the transcripts of both parties. (Exhibits 5 and 6)

#### Testimony of Plaintiff

On September 18, 2018, plaintiff dropped a friend at the Microtel Hotel on Crystal Run Crossing and was on his way to pick up his mother at work in Ramsey, New Jersey. He made a right out of the Microtel onto the road leading to the entrance ramp (Exhibit 5 at 15), then a right at a stop sign onto the road which passes restaurants on his left and the Microtel on his right. (Exhibit 5 at 16) As he approached the traffic light at the intersection in front of him, he observed it was yellow, turning to red. He came to a complete stop in the second left-hand lane at the intersection. There were three lanes of traffic in the opposite direction, one or two were turning lanes. (Exhibit 5 at 17-18)

Plaintiff was stopped at the red light for one minute. When the light turned green, as he intended to go straight ahead, he proceeded into the intersection. (Exhibit 5 at 19-20) As he went into the intersection, there were no cars coming toward him or turning onto the Route 17 westbound ramp from the opposite direction. (Exhibit 5 at 20) He did not see defendant's vehicle until it impacted his, but did remember hearing brakes just before the accident. (Exhibit 5 at 21) He was

driving at about 15 miles per hour before the accident. (Exhibit 5 at 24) Plaintiff was looking straight ahead at the time of the impact, which took place “probably right under the light” in the intersection. (Exhibit 5 at 23) He characterized the impact as “hard.” His car was pushed slightly to the right, but remained in the lane. His airbags did not deploy. (Exhibit 5 at 22)

#### Defendant’s Testimony

On September 18, 2018, at around 6:00 p.m., defendant was driving her vehicle westbound on Crystal Run Crossing. (Exhibit 6 at 12-15) She was involved in an accident at the intersection near Chili’s Restaurant which leads to Route 17. (Exhibit 6 at 15) There were three lanes in the defendant’s direction, and two on the opposite side. (Exhibit 6 at 16) Defendant was on her way home from work, approximately halfway to the intersection for the entrance ramp, when she noticed the yellow light. (Exhibit 6 at 20) She was driving at about 20 miles per hour when she looked to the left and saw the light was yellow. (Exhibit 6 at 21, 24) She proceeded into the intersection and, while she was under the light, the light turned red. (Exhibit 6 at 21, 25) She turned her wheel to the left and did not look back at the light after that. (Exhibit 6 at 23) She never saw plaintiff’s vehicle or any other cars coming onward until after the impact. (Exhibit 6 at 25-26) Although they both rode to the hospital in the same ambulance, she did not speak to plaintiff at the scene or anytime after. (Exhibit 6 at 31)

#### **Motion for Summary Judgment**

Plaintiff asserts there are no triable issues of material fact. Defendant acknowledges having entered the intersection with the intention of making a left turn. She did not see plaintiff proceeding straight through the intersection and failed to yield the right of way to him. As such, she violated Vehicle and Traffic Law§1141, which requires a driver intending to turn left into an intersection to

“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.” Such a failure constitutes negligence as a matter of law.

Plaintiff was entitled to anticipate that defendant would obey the traffic law requiring her to yield. Her failure to see plaintiff’s car, that which she should have seen by the proper use of her senses, further constitutes negligence. Plaintiff having met his initial burden, the burden shifts to defendant to offer a non-negligent explanation. As the defendant cannot offer an explanation, the plaintiff is entitled to summary judgment.

### **Opposition**

Defendant argues that summary judgment is inappropriate where, as here, plaintiff is unable to establish where his vehicle was in relation to the intersection when the other vehicle turned left in front of him. Plaintiff further failed to establish which vehicle entered the intersection first. Even a party with the right of way is obligated to exercise reasonable care to avoid an accident. The deposition testimony raises triable issues of fact about whether plaintiff’s vehicle was already in the intersection when defendant approached the intersection, and whether defendant, as she turned left, should have seen plaintiff’s vehicle.

### **Reply**

Plaintiff replies that defendant’s testimony raises no issues regarding which vehicle entered the intersection first. In fact, she testified that she could not remember seeing plaintiff’s vehicle or any other oncoming vehicles until after the impact. In contrast, plaintiff specifically testified that, before he entered the intersection, there were no oncoming vehicles and no vehicles turning left in front of him onto the Route 17 ramp.

The Court has fully considered the submissions of the parties.

### Discussion

For the reasons which follow, plaintiff's motion is granted.

Summary judgment is a drastic remedy and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact. (*Piccirillo v. Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]) The function of the Court on such a motion is issue finding, and not issue determination. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]) The Court is not to engage in the weighing of evidence; rather, the Court's function is to determine whether "by no rational process could the trier of facts find for the non-moving party." (*Jastrzebski v. N. Shore Sch. Dist.*, 232 AD2d 677, 678 [2d Dept 1996])

The Court is obliged to draw all reasonable inferences in favor of the non-moving party. (*Rizzo v. Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 1995]) Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted. (*Anyanwu v. Johnson*, 276 AD2d 572 [2d Dept 2000]) Where facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility, summary judgment must not be granted. (*Jastrzebski*, 223 AD2d at 678)

Vehicle and Traffic Law section 1141 provides, that:

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.

Provided that the plaintiff driver demonstrates that the proximate cause of an accident is the

defendant driver's violation of the Vehicle and Traffic Law by turning left directly into the path of his oncoming vehicle, a violation of the section constitutes negligence as a matter of law. (*Gause v. Martinez*, 91 AD3d 595 [2d Dept 2012]) The operator of a vehicle with the right of way is entitled to assume that the opposing driver will obey the traffic laws requiring [her] to yield. (*Yu Mei Liu v. Weihong Liu*, 163 AD3d 611 [2d Dept 2018])

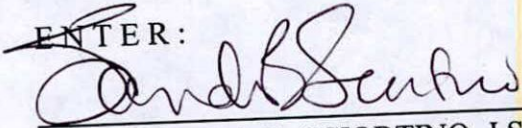
While defendant correctly argues that a driver with the right of way has a duty to exercise reasonable care to avoid a collision with another vehicle in the intersection (*Kassim v. Nur Uddin*, 119 AD3d 529 [2d Dept 2014]), that provision applies only when both vehicles are actually in the intersection. In this matter, plaintiff has established his right to judgment as a matter of law, through his uncontroverted testimony that no vehicles were coming from defendant's direction just prior to his entering the intersection, and no vehicles were turning left in front of him onto the Route 17 on-ramp. For her part, defendant did not remember seeing any oncoming cars until after impacting the plaintiff's vehicle, under the traffic light. Moreover, apart from asserting that the traffic light was yellow, and not red, when she entered the intersection, defendant did not contest the description of the accident in the certified police report (Exhibit 4) that she "began to turn left to proceed South onto SR17 westbound on ramp and fails to stop at red light striking [plaintiff's vehicle]." (See Exhibit 6 at 36)

On the basis of the foregoing, defendant has failed to raise a triable issue of fact in opposition, and partial summary judgment is appropriately granted to plaintiff.

A virtual status conference shall be held on January 12, 2021 at 9:30 a.m. A Microsoft

Teams link will be provided in advance of the conference date.

Dated: October 26, 2020  
Goshen, New York

ENTER:  
  
HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*