

**Selemba v Puliga**

2020 NY Slip Op 35334(U)

July 7, 2020

Supreme Court, Orange County

Docket Number: Index No. EF000642-2020

Judge: Catherine M. Bartlett

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

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

LISA M. SELEMBA,

Plaintiff,

-against-

GABRIELLA DELDRICE PULIGA and
STEPHEN C. PULIGA,

Defendants.

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. EF000642-2020
Motion Date: June 26, 2020

The following papers numbered 1 to 8 were read on Plaintiff's motion for partial
summary judgment on liability:

Notice of Motion - Affirmation / Exhibits - Affidavit ..... 1-3
Affirmation in Opposition / Exhibits - Affidavits (2) / Exhibits ..... 4-6
Reply Affirmation (Exhibits) - Reply Affidavit / Exhibits ..... 7-8

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

A. Factual Background

This is a personal injury action arising out of a motor vehicle accident that occurred on
the morning of June 4, 2019 on Bailey Road in the Town of Wawayanda, New York.

Plaintiff Lisa Selemba's affidavit states:

- 3. ...I was traveling westbound on Bailey Road at an approximate rate of speed of
15 to 20 miles per hour. I had been traveling on Bailey Road for roughly ten
seconds. Then, without warning, I was suddenly and violently struck on the right

passenger side of my vehicle as I passed the driveway at 65 Bailey Road. My vehicle was struck with such force, it was caused to spin nearly 360 degrees counterclockwise. My vehicle finally came to rest facing the vehicle that struck me, whose front end was partially in the roadway and the rear tires were still in the driveway. [cit.om.] The driveway was located to my right-hand-side while traveling westbound on Bailey Road. I never saw the other defendants' vehicle coming until after the impact....

Defendant Stephen Puliga resides at 65 Bailey Road, and is the owner of the vehicle operated by defendant Gabriella Puliga, his daughter, that struck Plaintiff's vehicle. The Puligas aver that there is a telephone pole to the left of the driveway which obscures one's vision of oncoming traffic on Bailey Road. Defendant Gabriella Puliga's affidavit states:

5. ...I pulled the Honda automobile slightly past the end of our driveway, approximately 3 to 4 feet, in order to have an unobstructed view down Bailey Road to my left. As I did so, I looked left, then to the right, and then to the left again. This took approximately 3 ½ seconds. When I looked left or the second time, I saw a flash of something out of the corner of my eye to my left, and then the impact occurred. My speed at the moment of impact was negligible. Only after the accident was over did I realize that the flash I saw out of the corner of my eye must have been Selemba's car. The impact occurred almost at the exact moment when my car had pulled forward enough to have clear visibility looking down Bailey Road to my left.

....

7. Although I did not observe the exact path of travel of the plaintiff's vehicle after the impact occurred and she passed me, I do know that she ended up with her car facing back in my direction, within what should have been its own lane of travel before the accident, such that it must have made approximately a 180 degree spin, not a 360 degree spin as she describes in her affidavit.

....

10. Immediately after the accident was over, I observed Ms. Selemba get out of her car. She began screaming at me, making statements such as "What did you do?" and "No one is ever driving on this road." She was dressed in what appeared to be her pajamas. She said something to the effect that she was just returning after dropping her son off at his place of work and was rushing home.

Photographs of the vehicles involved in the accident demonstrate that the front left side of the bumper on Defendants' vehicle impacted the front and rear passenger side doors on

Plaintiff's vehicle. The force of the impact ripped off the Defendants' bumper, but there was no additional structural damage to their vehicle. Defendants proffered no photographs depicting the line of sight from the Puliga driveway eastward on Bailey Road, or the telephone pole which purportedly obstructed the view of oncoming westbound traffic on Bailey Road.

## **B. The Procedural Posture**

Plaintiff commenced this action to recover for injuries allegedly sustained in the June 4, 2019 accident. After issue was joined, and before the commencement of formal discovery, Plaintiff interposed this motion for partial summary judgment on liability, asserting that the Defendant operator was negligent as a matter of law for failing to yield the right of way in violation of Vehicle and Traffic Law §1143. Defendants in opposition contend that there are triable issues of fact as to (1) whether Ms. Puliga exercised reasonable care in an effort to comply with VTL §1143, (2) Plaintiff's comparative negligence, and (3) proximate cause.

## **C. Legal Analysis**

### **1. Vehicle and Traffic Law §1143**

In *Ricciardi v. Nelson*, 142 AD3d 492 (2d Dept. 2016), the Second Department, construing VTL §1143, wrote:

“The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed” (Vehicle and Traffic Law §1143; *see Marcel v. Sanders*, 123 AD3d 1097...; *Adobea v. Junel*, 114 AD3d 818, 819...). A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law (*see Estate of Cook v. Gomez*, 138 AD3d 675...; *Marcel v. Sanders*, 123 AD3d at 1098...; *Adobea v. Junel*, 114 AD3d at 819...; *Botero v. Erraez*, 289 AD2d 274...).

*Id.*, 142 AD3d at 493. *See also, Desio v. Cerebral Palsy Transport, Inc.*, 121 AD3d 1033, 1034 (2d Dept. 2014).

It is incontestable that Ms. Puliga, as she sought to enter Bailey Road from her father's driveway, was obligated by VTL §1143 to yield the right of way to Plaintiff's vehicle as it was approaching on Bailey Road. Defendants do not deny that Ms. Puliga failed to yield the right of way. However, citing *Brown v. State of New York*, 31 NY3d 514 (2018), they observe that it is only an *unexcused* violation of the Vehicle and Traffic Law that constitutes negligence (*see, Martin v. Herzog*, 228 NY 164 [1920]), and contend that there are triable issues of fact whether Ms. Puliga exercised reasonable care in an effort to comply with the statute. *See, id.*, 31 NY3d at 521; *Luck v. Tellier*, 222 AD2d 783, 785 (3d Dept. 1995); *Aranzullo v. Seidell*, 96 AD2d 1048, 1049 (2d Dept. 1983); 1A NY PJI3d 2:26 at 320 (2020).

Once the plaintiff has established a prima facie case, showing the defendant's violation of the Vehicle and Traffic Law, the defendant has the burden of coming forward with evidence to demonstrate that her conduct was justified under the circumstances. *See, Martin v. Herzog, supra; Murchison v. Incognoli*, 5 AD3d 271 (1<sup>st</sup> Dept. 2004); 1A NY PJI3d 2:27, at 326 (2020). Plaintiff having here demonstrated Ms. Puliga's failure to yield in violation of VTL §1143, the burden shifted to Defendants to produce evidence justifying her conduct.

The fact that Ms. Puliga did not see Plaintiff's vehicle approaching is not *per se* a valid excuse, as she could be held negligent as a matter of law either for deliberately failing to yield the right of way to Plaintiff's approaching vehicle or for failing to see that vehicle approaching when under the facts and circumstances she should have done so by employing the use of her senses. *See, Mazza v. Manzella*, 49 AD3d 609, 610 (2d Dept. 2008); *Breslin v. Rudden*, 291 AD2d 471, 471-472 (2d Dept. 2002); *Ferrara v. Castro*, 283 AD2d 392, 393 (2d Dept. 2001); *Rockman v. Brosnan*, 280 AD2d 591, 592 (2d Dept. 2001); *Smalley v. McCarthy*, 254 AD2d 478, 478-479

(2d Dept. 1998). Neither is Ms. Puliga's claim that her vision was obstructed a valid excuse *per se*, as she may be held negligent as a matter of law for entering the roadway despite the fact that her vision was obstructed. *See, Miller v. County of Suffolk*, 163 AD3d 954, 956-957 (2d Dept. 2018); *Garza v. Taravella*, 74 AD3d 1802, 1804 (4<sup>th</sup> Dept. 2010); *Whitcombe v. Phillips*, 61 AD3d 1431 (4<sup>th</sup> Dept. 2009); *Powers v. Medina*, 1 AD2d 727 (3d Dept. 1955).

Here, in any event, Defendants' evidence was insufficient to demonstrate the existence of any triable issue of fact as to whether Ms. Puliga exercised reasonable care in an effort to comply with VTL §1143. The claim that her vision of approaching traffic on Bailey Road was obstructed is wholly conclusory and unsubstantiated. While Defendants proffered photographs showing the damaged condition of the vehicles, conspicuously lacking was any photographic evidence showing the line of sight eastward from the Puliga driveway or the purportedly obstructed view of traffic proceeding westbound on Bailey Road. Furthermore, the photographic evidence unequivocally demonstrates that Ms. Puliga broadsided Plaintiff's vehicle, which means that Defendants' vehicle was still in motion as Plaintiff was crossing in front of the driveway, *i.e.*, at a time when Plaintiff's vehicle was quite obviously visible and should have been seen by Ms. Puliga.

In view of the foregoing, Plaintiff has established her entitlement to partial summary judgment on two issues: (1) that Ms. Puliga was negligent in failing to yield the right-of-way in violation of VTL §1143, and (2) that her negligence in this regard was a proximate cause of the ensuing accident. However, it is hornbook law that there may be more than one proximate cause of an accident, and Ms. Puliga's affidavit gives rise to material unresolved questions of fact

whether Plaintiff was traveling at an excessive rate of speed, and if so, whether her negligence in this regard was also a proximate cause of the accident.

It is therefore

ORDERED, that Plaintiff's motion is granted in part and denied in part, and it is further

ORDERED, that it is hereby determined as a matter of law that defendant Gabriella Deldrice Puliga was negligent in failing to yield the right-of-way in violation of VTL §1143, and that her negligence in this regard was a proximate cause of the subject accident, and it is further

ORDERED, that Plaintiff's motion is otherwise denied.

The foregoing constitutes the decision and order of the Court.

Dated: July 7, 2020  
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT  
JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE