SHORT FORM ORDER **INDEX NO. 623276/2019**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

DAWN BRIDGES,

Plaintiff,

-against-

GREGORY PETRA and LISA A. PETRA,

Defendants.

ORIG. RETURN DATE: April 2, 2020
FINAL RETURN DATE: July 2, 2020
MOT. SEQ. #: 001 MG

PLTF'S ATTORNEY:
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DEFTS' ATTORNEY:
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Upon the following papers read on this e-filed motion for partial summary judgment: Notice of Motion/ Order to Show Cause and supporting papers filed by plaintiff, on March 12, 2020; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers _____; Replying Affidavits and supporting papers _____; Other ____; it is

ORDERED that the motion by plaintiff Dawn Bridges for partial summary judgment in her favor on the issue of liability, and to dismiss defendants' second affirmative defense of culpable conduct, is granted; and it is further

ORDERED that a preliminary conference shall be held on October 15, 2020.

This is an action to recover damages for injuries allegedly sustained by plaintiff Dawn Bridges as a result of a motor vehicle accident, which occurred on May 6, 2018, when she was the passenger of a car operated by non-party Gerald W. Bridges, and owned by non-party David L. Wood. This accident allegedly occurred on Medford Avenue, at or near the address known as 167 Medford Avenue, when a vehicle owned by defendant Lisa A. Petra, and operated by defendant Gregory Petra, pulled out of a parking lot attempting to make a left turn, and crossed into the path of plaintiff's vehicle, causing a collision.

Plaintiff now moves for summary judgment on the issue of defendants' liability, arguing that defendant driver's negligence was the sole proximate cause of the accident. Plaintiff argues that defendant driver violated, inter alia, Vehicle and Traffic Law § 1141 by making a left turn into the path of plaintiff's vehicle, which was traveling with the right-of-way. Plaintiff also seeks, in effect, to dismiss defendants' second affirmative defense of culpable conduct. In support of the motion, plaintiff submits, inter alia, her affidavit and the certified police report. Defendants do not oppose the motion.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 87 NYS2d 316 [1985]). The moving party has the initial burden of proving entitlement to summary judgment (*id.*). Once the moving party demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, 49 NY2d 557; 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]). The failure to make such showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, *supra*). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see New York City Asbestos Litig. v Chevron Corp.*, 33 NY3d 20, 99 NYS3d 734 [2019]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 45 NYS3d 864 [2016]).

A failure to comply with the Vehicle and Traffic Law constitutes negligence as a matter of law (*see Kerolle v Nicholson*, 172 AD3d 1187, 101 NYS3d 387 [2d Dept 2019]; *Marks v Rieckhoff*, 172 AD3d 847, 101 NYS3d 63[2d Dept 2019]; *Kaziu v Human Care Servs. for Families & Children, Inc.*, 167 AD3d 588, 90 NYS3d 66 [2d Dept 2018]). Pursuant to Vehicle and Traffic Law § 1141, a vehicle intending to turn left within an intersection or into an alley, private road, or driveway must 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 (*see Ming-Fai Jon v Wager*, 165 AD3d 1253, 87 NYS3d 82 [2d Dept 2018]; *Giannone v Urdahl*, 165 AD3d 1062, 86 NYS3d 562 [2d Dept 2018]; *Lebron v Mensah*, 161 AD3d 972, 76 NYS3d 219 [2d Dept 2018]). Thus, a driver who attempts to make a left turn when it not reasonably safe to do so is in violation of this provision of the Vehicle and Traffic Law (*see Foley v Santucci*, 135 AD3d 813, 23 NYS3d 338 [2d Dept 2016]; *Krajiniak v Jin Y Trading, Inc.*, 114 AD3d 910, 980 NYS2d 812 [2d Dept 2014]; *Ducie v Ippolito*, 95 AD3d 1067, 944 NYS2d 275 [2d Dept 2012]).

To establish prima facie entitlement to judgment as a matter of law on the issue of negligence, a plaintiff is no longer required to show freedom from comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]; *see Liu v Lowe*, 173 AD3d 946, 102 NYS3d 713 [2d Dept 2019]; *Heard v Schade*, 172 AD3d 1335, 99 NYS3d 666 [2d Dept 2019]; *Bloechle v Heritage Catering, Ltd.*, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; *Catanzaro v Edery*, 172 AD3d 995, 101 NYS3d 170 [2d Dept 2019]; *Marks v Rieckhoff*, *supra*). Although the operator of a vehicle with the right-of-way is entitled to assume that other drivers will obey traffic laws requiring them to yield (*see Richardson v Cablevision Sys. Corp.*, 173 AD3d 1083, 104 NYS3d 655 [2d Dept 2019]; *Jeong Sook Lee-Son v Doe*, 170 AD3d 973, 96 NYS3d 302 [2d Dept 2019]; *Enriquez v Joseph*, 169 AD3d 1008, 94 NYS3d 599 [2d Dept 2019]), the driver with the right-of-way also has a duty to keep a proper lookout to avoid collisions with other vehicles (*see Matias v Bello*, 165 AD3d 642, 84 NYS3d 551 [2d Dept 2018]; *Miron v Pappas*, 161 AD3d 1063, 77 NYS3d 163 [2d Dept 2018]; *Mark v New York City Tr. Auth.*, 150 AD3d 980, 55 NYS3d 128 [2d Dept 2017]). Nonetheless, a driver with the right-of-way who only has seconds to react to a vehicle which has failed to yield the right-of-way is not comparatively negligent for failing

to avoid the collision (*see Jeong Sook Lee-Son v Doe*, *supra*; *Enrique v Joseph*, *supra*; *Rohn v Aly*, 167 AD3d 1054, 91 NYS3d 256 [2d Dept 2018]).

Plaintiff has established her prima facie entitlement to summary judgment on the issue of liability by demonstrating that defendant driver was negligent, as he violated Vehicle and Traffic Law § 1141 (*see Brodney v Picinic*, 172 AD3d 673, 99 NYS3d 399 [2d Dept 2019]; *Ming-Fai Jon v Wager*, *supra*; *Giannone v Urdahl*, *supra*; *Yu Mei Liu v Weihong Liu*, 163 AD3d 611, 81 NYS3d 75 [2d Dept 2018]; *Smith v Fuentes*, 158 AD3d 731, 68 NYS3d 739 [2d Dept 2018]). Plaintiff, by her affidavit, states that she was the seat-belted passenger in a vehicle operated by Gerald W. Bridges. She states that the vehicle she was in was traveling northbound on Medford Avenue, approaching the address known as 167 Medford Avenue. She states that defendant driver exited a parking lot, crossing the northbound lanes of Medford Avenue, and collided with the car she was traveling in. Plaintiff also submits the certified police report, which reflects defendant driver's statement that he did not see plaintiff's vehicle before attempting the left turn (*see Odetalla v Rodriguez*, 165 AD3d 826, 85 NYS3d 560 [2d Dept 2018]; *Mastricova v Ruderman*, 164 AD3d 1435, 82 NYS3d 546 [2d Dept 2018]). Plaintiff has also established her prima facie entitlement to summary judgment as to defendant Lisa A. Petra. Vehicle and Traffic Law § 388 provides that an owner of a motor vehicle is vicariously liable for the negligence of those whom the owner allows to drive his or her vehicle (*see Country-Wide Ins. Co. v National R.R. Passenger Corp.*, 6 NY3d 172, 811 NYS2d 302 [2006]; *Jung v Glover*, 169 AD3d 782, 93 NYS3d 390 [2d Dept 2019]).

Plaintiff having established prima facie entitlement to summary judgment, the burden now shifts to defendants to submit evidentiary proof in admissible form which raises a triable issue of fact (*see Zuckerman v City of New York*, *supra*; *Yu Mei Liu v Weihong Liu, supra*). Defendants fail to oppose the motion which, in effect, is a concession that no question of fact exists, and the facts as alleged in the moving papers may be deemed admitted (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 369 NYS2d 667 [1975]; *114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC*, 178 AD3d 757, 114 NYS3d 100 [2d Dept 2019]).

As to the branch of plaintiff's motion seeking, in effect, to dismiss defendants' second affirmative defense of culpable conduct, the "plaintiff bears the burden of demonstrating that the affirmative defense is without merit as a matter of law (*Bank of N.Y. v Penalver*, 125 AD3d 796, 797, 1 NYS3d 825 [2d Dept 2015]; *see Jacob Marion, LLC v Jones*, 168 AD3d 1043, 93 NYS3d 120 [2d Dept 2019]; *Gonzalez v Wingate at Beacon*, 137 AD3d 747, 26 NYS3d 562 [2d Dept 2016]). "In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference . . . [and] if there is any doubt as to the availability of a defense, it should not be dismissed" (*Fireman's Fund Ins. Co. v Farrell*, 57 AD3d 721, 723, 869 NYS2d 597 [2d Dept 2008]; *see LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 122 NYS2d 309 [2d Dept 2020]).

While a plaintiff is no longer required to show freedom from comparative fault (*see Rodriguez v City of New York*, *supra*; *Bloechle v Heritage Catering, Ltd.*, *supra*; *Catanzaro v Edery*, *supra*; *Marks v Rieckhoff*, *supra*; *Auguste v Jeter*, *supra*), the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion if the plaintiff moves for summary judgment

dismissing a defendant's affirmative defense of comparative negligence (*Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]). Plaintiff has established, prima facie, entitlement to the relief requested by establishing that she was merely riding as a passenger in the vehicle when it was involved in a collision. Therefore, plaintiff has established prima facie entitlement to dismissal of defendants' second affirmative defense of culpable conduct. As plaintiff's motion was unopposed, defendants failed to raise a triable issue of fact as to their negligence (*see Alvarez v Prospect Hosp.*, *supra*; *see also Kuehne & Nagel v Baiden*, *supra*).

Accordingly, the motion by plaintiff for summary judgment in her favor on the issue of liability and to dismiss defendants' second affirmative defense of culpable conduct is granted.

Dated: 8/21/20

HON. PAUL J. BAISLEY, JR., J.S.C.