

**Chesir v Hanan**

2021 NY Slip Op 30580(U)

March 1, 2021

Supreme Court, Kings County

Docket Number: 502220/2018

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on 1<sup>st</sup> the day of March, 2021.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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PACE H. CHESIR,

Plaintiff,

Index No. 502220/2018

-against-

DECISION AND ORDER

ABRAHAM HANAN and IRENE HANAN,

Defendants.

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The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	30-31
Answering Affidavit (Affirmation) _____	43
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This action involves a motor vehicle accident in which Defendant IRENE HANAN struck Plaintiff PACE CHESIR, who was a pedestrian in a crosswalk. Plaintiff PACE CHESIR moves for an Order (1) granting summary judgment on the issue of liability; and (2) dismissing all affirmative defenses as to issues relating to liability and comparative negligence as against Plaintiff.

The accident occurred just before 6:00pm on December 15, 2016. Plaintiff CHESIR was a pedestrian, walking along East 9<sup>th</sup> Street towards Avenue M where he planned to

cross Avenue M. Defendant HANAN was driving on East 9<sup>th</sup> Street towards Avenue M where she planned to make a right-turn upon reaching the intersection. When CHESIR reached the intersection of Avenue M and East 9<sup>th</sup> Street, the traffic light facing him was red and the pedestrian device displayed “Don’t Walk” and he stopped and waited for the light to change. When Defendant HANAN reached the intersection of Avenue M and East 9<sup>th</sup> Street, she stopped for the red light and placed her right turn signal on. After the pedestrian signal changed, Plaintiff CHESIR proceeded to cross Avenue M by walking in the crosswalk. After the light turned green, Defendant HANAN made a right turn onto Avenue M and made contact with Plaintiff CHESIR while he was walking in the crosswalk.

Plaintiff moves for summary judgment both as to Defendant’s negligence and his own lack of comparative negligence. These are separate questions and the Court will discuss each in turn.

First, Plaintiff has established that Defendant was negligent in failing to see him and yielding to him while he was in the crosswalk.

“A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries” (*Wray v. Galella*, 172 AD3d 1446, 1447 [2d Dept 2019], quoting *Tsyganash v. Auto Fleet Mall Mgt., Inc.*, 163 AD3d 1033, 1033–1034 [2d Dept 2018]).

Here, Plaintiff CHESIR established his prima facie entitlement to judgment as a matter of law on the issue of Defendants’ liability by submitting his own affidavit and deposition testimony, which demonstrated that he was walking within a crosswalk, with the pedestrian signal in his favor when Defendant HANAN failed to yield the right-of-way and struck him. Further, as Defendant HANAN was stopped at the red light, she would

not have been moving quickly to make the right turn once the light turned green and therefore should have seen Plaintiff in the crosswalk.

Second, Plaintiff has made out a prima facie case to dismiss Defendants' affirmative defense alleging comparative negligence.

“Even though a plaintiff is no longer required to establish his or her freedom from comparative negligence, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where ... the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence” (*Wray v. Galella*, 172 AD3d at 1447).

“A pedestrian who has the right of way is entitled to anticipate that motorists will obey the traffic laws that require them to yield” (*Wray v. Galella*, 172 AD3d at 1447, quoting *Huang v. Franco*, 149 AD3d 703, 703 [2d Dept 2017]). “Nevertheless, a pedestrian who crosses in a crosswalk with the right-of-way may still be held comparatively negligent if he or she failed to notice an oncoming vehicle that could have been seen by the exercise of ordinary care” (*id.* at 1447).

Plaintiff CHESIR's affidavit and deposition was sufficient to establish, prima facie, that he was not at fault in causing the accident as they demonstrate that he exercised due care by (1) waiting for the pedestrian signal to change; (2) confirming that he had the pedestrian signal in his favor; (3) looking for oncoming traffic in all directions before entering the crosswalk; (4) and that the collision occurred so suddenly that he could not avoid it (*see Dunajski v. Kirillov*, 148 AD3d [2d Dept 2017]).

In opposition, Defendant HANAN failed to raise a triable issue of fact as to whether Plaintiff CHESIR was comparatively at fault in causing the accident. It is uncontested that Plaintiff CHESIR looked both ways before entering the crosswalk. The cases cited by

Defendants, for the proposition that Plaintiff was negligent in failing to see Defendant HANAN as she was making her turn, are distinguishable as they involved motorists making a turn from in front of the pedestrian. Here, Defendant HANAN began her turn from behind Plaintiff, so he was not in a position to see her.

WHEREFORE, it is ORDERED that Plaintiff PACE CHESIR's motion for summary judgment as to liability against Defendants ABRAHAM HANAN and IRENE HANAN is granted, and it is further

ORDERED that Defendants' First Affirmative Defense is dismissed.

This constitutes the decision and order of the Court.

ENTER,



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J.S.C.