At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 14th day of APRIL, 2021

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

----------X

MUZIWAKHE THUSI,

Plaintiff,

-against-

YOEL BLEIER and FRIMET L. BLEIER,

Defendants,

----------X

Index No.: 524372/2018
Decision and Order

The following *papers NYSCEF* Doc #'s 13 to 24 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed	13-19
Opposing Affidavits (Affirmations)	21
Reply Affidavits (Affirmations)	24

After having heard Oral Argument on APRIL 14, 2021 and upon review of the foregoing submissions herein the court finds as follows:

Defendants, YOEL BLEIER and FRIMET L. BLEIER, move pursuant to CPLR 3212, for an Order granting summary judgment on liability. (MS#1). Plaintiff, opposes the same contending there are issues of fact for the jury.

This action arises out of a motor vehicle accident which occurred on December 19, 2016 at the intersection of New York Avenue and Avenue K in Brooklyn, New York. It is alleged that plaintiff was at a stop sign on New York Avenue and defendant was traveling with the right-of-way on Avenue K when plaintiffs car collided with defendants car.

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a *prima facie* showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers. A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR 3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id*.

In the present case, The defendant established prima facie entitlement to judgment as a matter of law by establishing that the plaintiffs vehicle proceeded into the intersection controlled by a stop sign without yielding the right-of-way to the defendants approaching vehicle in violation of Vehicle and Traffic Law § 1142(a). The evidence submitted by the defendant in support of her motion established, prima facie, that the plaintiff failed to properly observe and yield to cross traffic before proceeding into the intersection (*see Mohammad v. Ning*, 72 A.D.3d 913, 914, 899 N.Y.S.2d 356; *Exime v. Williams*, 45 AD3d 633, 634, 845 NYS2d 450; *Hull v. Spagnoli*, 44 AD3d 1007, 1007,

844 NYS2d 416; *Gergis v. Miccio*, 39 AD3d 468, 468–469, 834 NYS2d 253; *Bongiovi v. Hoffman*, 18 AD3d 686, 687, 795 NYS2d 354), and that this was the sole proximate cause of the accident.

In opposition, the plaintiff failed to raise a triable issue of fact. Plaintiff contends that, contrary to the defendants claim, that plaintiff did stop at the stop sign and proceeded when it was safe and it was defendant that failed to see what there was to be seen. "However, '[a] driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law' " (*Mohammad v. Ning*, 72 AD3d at 914–915, 899 NYS2d 356, *quoting Gergis v. Miccio*, 39 AD3d at 468, 834 NYS2d 253; *see Exime v. Williams*, 45 AD3d at 633, 845 NYS2d 450; *Marcel v. Chief Energy Corp.*, 38 AD3d 502, 503, 832 NYS2d 61); *quoting, Briggs v. Russo*, 98 AD3d 547, 547–48, 949 NYS2d 719, 721 (2d Dep't 2012).

Thus, the question of whether the plaintiff stopped their vehicle at the stop sign is not dispositive, since the evidence established that plaitniff failed to yield the right-of-way even if they did stop *(see Mohammad v. Ning*, 72 AD3d at 915, 899 NYS2d 356; *Exime v. Williams*, 45 AD3d at 634, 845 NYS2d 450; *McCain v. Larosa*, 41 AD3d 792, 793, 838 NYS2d 663; *Morgan v. Hachmann*, 9 AD3d 400, 400, 780 NYS2d 33); *quoting Briggs v. Russo*, 98 AD3d 547, 548, 949 NYS2d 719, 721 (2012). Additionally, the "driver who had the right of way was entitled to anticipate that the driver with the stop sign would obey the traffic law requiring them to yield" (*Hull v. Spagnoli*, 44 AD3d 1007, 1007, 844 NYS2d 416; *see Mohammad v. Ning*, 72 AD3d at 914, 899 NYS2d 356; *McCain v. Larosa*, 41 AD3d 792, 793, 838 NYS2d 663*; Gergis v. Miccio*, 39 AD3d at

468, 834 NYS.2d 253); *quoting, Briggs v. Russo*, 98 AD3d 547, 548, 949 NYS2d 719, 722 (2012).

In the present case, just like the case referenced above it is undisputed that the defendant driver had the right-of-way and the other vehicle operated by the plaintiff entered the intersection from a perpendicular side street which was controlled by a stop sign and defendant's vehicle that had the right of way. In opposition plaintiff fails to raise a triable issue of fact. Plaintiff contends that defendant was negligent in failing to "see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Balducci v Velasquez*, 92 AD3d 626, 628 [2012]). However, by plaintiffs own admission they did not see the defendatns vehicle before proceeding into the intersection. Additionally, "to be entitled to partial summary judgment a movant does not bear the double burden of establishing a prima facie case of liability and the absence of his or her own comparative fault." *Quoting Rodriguez v. City of New York*, 31 NY3d 312, 324–25, 101 NE3d 366, 374 (2018). "Issues of comparative negligence is generally a question of fact for a trier of fact." *Calderon-Scotti v. Rosenstein*, 119 AD3d 722 (2d Dept. 2014).

Accordingly, the defendants motion for summary judgment as to liability of the is hereby granted, for the reasons stated above. (MS#1).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
April 14, 2021

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ