

**Levy v Machuca**

2021 NY Slip Op 33394(U)

May 12, 2021

Supreme Court, Orange County

Docket Number: Index No. EF011738-2018

Judge: Robert A. Onofry

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

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X

MELISSA LEVY,

Plaintiff,

- against -

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. EF011738-2018

ANDREINA S. MACHUCA,

Defendant.

**DECISION and ORDER**

-----X

Motion Date: March 31, 2021

-----X

ANDREINA S. MACHUCA,

Plaintiff,

-against-

Index No. EF004196-2019

MELISSA LEVY,

Defendant.

-----X

The following papers numbered 1 to 7 were read and considered on a motion by the Defendant, pursuant to CPLR § 3212, for summary judgment on the issue of liability.

Notice of Motion- Coleman Affirmation- Exhibits A-F .....	1-3
Opposition- Cohn Affirmation- Exhibits A-D- Levy Affidavit .....	4-6
Affirmation in Reply- Cambareri .....	7

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is denied.

### **Introduction**

The Plaintiff Melissa Levy (hereinafter "Levy") commenced this action to recover damages arising from a motor vehicle accident.

The Defendant Andreina Machuca (hereinafter "Machuca") moves for summary judgment on the issue of liability.

The motion is denied.

### **Factual/Procedural Background**

Initially, it is noted, Machuca commenced an action against Levy arising from the same accident under Index No. EF004196-2019 (*supra*). By order dated January 20, 2020, that action was joined with the action at bar.

The accident at issue occurred at the intersection of a service road and Meadow Hill Road in Newburgh, New York, at approximately 1:22 a.m. on Sunday, October 7, 2018. Levy was traveling north on the service road, and Machuca was traveling west on Meadow Hill Road. There was a stop sign in Levy's direction of travel. The front passenger's side of Machuca's vehicle made contact with the rear passenger's side of Levy's vehicle as it was leaving the intersection.

According to a police report of the accident:

Vehicle 1 [Levy's vehicle] was exiting the parking lot of the Newburgh Mall located at 1401 State Route 300 by way - of a service road which intersects to Meadow Hill Road- Vehicle 2 [Machuca's vehicle] was traveling West on Meadow Hill Road. Vehicle 1 failed to stop at a stop sign located at the intersection of the service road and Meadow Hill Road, and pulled directly in front of vehicle 2 causing an un-avoidable crash. The operator of vehicle 1 stated numerous times that she was at fault for the accident. The operator of vehicle 1 was transported to St Lukes Hospital due to a severe facial laceration .

(Motion, Exhibit C).

At an examination before trial, Levy testified as follows.

The accident occurred as she was driving home after a dinner date with her boyfriend at Buffalo Wild Wings.

Prior to the accident, she stopped “[m]aybe ten or fifteen feet” from the stop sign in her direction of travel, and then “proceeded forward a little bit and stopped again.”

She then looked left and then right. To her left, she saw another vehicle “a considerable distance” up a hill. She saw nothing to her right [the direction from which Machuca was coming].

As she proceeded through the intersection, her vehicle was struck in the rear passenger's side, and spun around.

When she got out of her vehicle, Machuca was out of her vehicle, and yelled and cursed at her.

There was a witness, but she did not know the person's name or identity.

Her boyfriend arrived as he was walking home from their date.

When Machuca yelled at Levy that the accident was all her fault, and that she had ruined her car, she told the Machuca that she was sorry.

Prior to the impact, Levy did not hear any noises, such as tires screeching or a horn sounding, etc.

She did not recall having a conversation with any police officer at the scene.

She disagreed with the police report of the accident, to wit: “That's -- so my version was not there, umm, and it was basically just her testimony of the moments in which it happened.

There – my side does not exist, so that's what I don't agree with.”

Levy “might” have stated out loud that the accident was her fault after Machuca yelled and cursed at her.

She did not remember if she spoke to any police officers.

At an examination before trial, Machuca testified as follows.

At the time of the accident, she was driving home from work in her 2003 Honda CRV, which was in good mechanical condition.

It was late and dark, but there were artificial lights in the area.

Before the accident, she stopped at a red traffic light a distance away from the accident scene at the place where Route 300 crosses Meadow Hill Avenue/Road.

She thereafter proceeded at about 30 miles per hour to the intersection where the accident occurred. She saw a vehicle to her left that was stopped at a stop sign “until it pull out right in front of [her].” She first saw it when it was three to four car lengths away. When she saw Levy pull in front of her, she “applied [her] brakes hard, but there was nothing [she] could do. It happened in a split second.” Her air bags deployed. Her vehicle was totaled. Levy exited her vehicle and “started to apologize. She said it was her fault and that she didn't see me, and that's when I noticed her head injury and we got her down to the ground. I held a T-shirt to her head until the cops arrived and she repeatedly told me that it was her fault and that she didn't see me and that she was sorry.”

In a sworn statement Nicholas Oliveira avers as follows.

He is the boyfriend of Levy.

He was walking home after their date at Buffalo Wild Wings when he heard a “very loud

metal on metal bang.” He didn’t hear brakes, etc. He could not see the accident site.

When he arrived at the accident site, he saw one car was in the middle of the intersection with the front end completely “demolished.” Levy’s car was still spinning.

There was a man on the scene who stated that he had witnessed the accident.

The other driver was screaming and cursing at Levy. Levy “seemed to be in shock and kept telling the girl she was sorry.” He gave his undershirt to put on the wound on Levy’s face.

Levy never spoke to the police.

Finally, he avers, he had driven through that intersection with Levy on many occasions and he had never seen her drive irresponsibly.

Machuca moves for summary judgment on the issue of liability.

In support of the motion, Machuca submits an affirmation from counsel, Christopher Coleman.

Coleman argues that there is not a genuine issue of fact that Levy was negligent in the happening of the accident, and that Machuca was not. Rather, he asserts, the accident occurred because Levy violated Machuca’s right of way.

In opposition to the motion, Levy submits her own affidavit.

Levy asserts that, just prior to the collision, she stopped at the stop sign and looked both ways before she drove across Meadow Hill Avenue. She avers that she “always checks both ways carefully before [she drives] across Meadow Hill in that intersection, as Meadow Hill does not have stop signs.” She saw a car or truck coming down the hill from the left, but nothing coming from the right.

She entered the intersection and had traveled across three lanes before she was struck.

She was driving about three to five miles an hour. When most of her vehicle had gotten across Meadow Hill Avenue, it was struck on the rear passenger side with “incredible force.” She didn’t hear any brakes or a horn. She never saw the car that struck her.

She “vaguely” remembers spinning around in her vehicle multiple times and receiving a severe blow to her face. When her car stopped, she had blood dripping down her face. Machuca yelled and cursed at her. She felt disoriented and in pain.

She kept telling Machuca she was sorry, hoping that she would leave her alone.

Her boyfriend heard the accident and came to the scene. He held a shirt to her face.

Levy notes that, at the Machuca’s examination before trial, she stated that she helped her by holding a T-shirt to her face. However, she avers, this was not true, as her boyfriend was the only person who helped her until the paramedics arrived.

Levy avers that she reviewed the accident report, and never told the police that the accident was her fault. Indeed, she asserts, she never spoke to any police officers at the scene, as she had suffered a severe head injury and went straight to the hospital. Rather, she notes, she assumes that Machuca told the police that she stated that the accident was her fault. She asserts that she called the police station several times to correct the police report, but never received a call back.

Levy avers that “[t]here is no way that the other driver was going the speed limit of 30 mph as she claims. If she was going 30 mph, I would have seen her or she would have had time to stop as my car had gotten most of the way across three lanes. She also never braked or blew her horn. After considering the events of the accident, the other driver must have been going well over the speed limit through intersection and not paying attention. She hit my car, a

jeep wrangler, so hard that the rear axle was knocked off. My face hit the steering wheel so hard that it broke the steering wheel cover. The intersection with Rt. 300 is only about 350' away from where the accident occurred and she got there in seconds because she was speeding. This is I why I did not see her and I had gotten my car most of the way across the intersection before she struck my vehicle.”

In further opposition to the motion, Levy submits an affirmation from counsel, Mikael Cohn.

Cohn notes that, when Levy looked to the right at the stop sign, she could see about three hundred and fifty feet to an intersection but saw no vehicles coming.

Cohn argues that the nature of the accident, and the damage to the vehicles, is not consistent with Machuca’s claim that she was driving only 30 miles per hour.

Moreover, he notes, she was unable to answer why she did not see Levy’s vehicle pass through almost three lanes of travel in her line of sight before she struck the vehicle. Indeed, he asserts, she claimed that she did apply her brakes, but had no time to stop.

In sum, he argues, there are questions of fact.

In reply, counsel for the Levy, Mark Cambareri, argues that there is no genuine issue of fact concerning Machuca’s negligence.

#### **Discussion/Legal Analysis**

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence in admissible form sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving

party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2<sup>nd</sup> Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2<sup>nd</sup> Dept. 2011].

To prevail on a motion for summary judgment on the issue of liability in a negligence case, the movant need no longer demonstrate that he or she was free from comparative fault. *Davis v. Commack Hotel, LLC*, 174 A.D.3d 501 [2<sup>nd</sup> Dept. 2019].

Further, the mere fact that an accident occurs does not necessarily mean that a Defendant was negligent and may be held liable for the same. *Georgas v. Mays Dept. Stores, Inc.*, 299 A.D.2d 314 [2<sup>nd</sup> Dept 2002].

There can be more than one proximate cause of an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. This is because each driver has a duty to exercise reasonable care under the circumstances to avoid an accident. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. An operator of a motor vehicle traveling with the right-of-way has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses to avoid colliding with other vehicles. *Fried v. Misser*, 115 A.D.3d 910 [2<sup>nd</sup> Dept. 2014]. Thus, a driver traveling with the right-of-way may nevertheless be found to have contributed to the happening of the accident if he or she did not use reasonable care to avoid the accident. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. However, a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014].

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014]. The driver with the right-of-way is entitled to

anticipate that the other motorist will obey traffic laws which require him or her to yield. *Adobea v. Junel*, 114 A.D.3d 818 [2<sup>nd</sup> Dept. 2014].

Vehicle and Traffic Law § 1140 provides: “(a) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway.”

Vehicle and Traffic Law § 1142 provides that every driver of a vehicle approaching a stop sign shall stop and, after having stopped, shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

Vehicle and Traffic Law § 1143 provides that “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.”

Here, in support of her motion, Machuca demonstrated a *prima facie* entitlement to judgment as a matter of law. At a minimum, Levy violated Vehicle and Traffic Law § 1142.

However, in opposition, Levy raised a triable issue of fact. The Court finds that factual issues exist with respect to essentially two aspects of the happening of the accident.

First, Meadow Lane Avenue where the accident occurred is three lanes wide (including the turning lane). Further, the stop sign for the service road is somewhat set back. The accident occurred as Levy’s car was leaving the intersection. Thus, and based upon the current record, Levy’s vehicle traversed a significant distance before it was struck by Machuca’s vehicle. This is true even though Machuca testified that she saw Levy’s vehicle as she was approaching the

intersection, and was traveling only 30 miles per hour. Indeed, Machuca testified that she did not see Levy's vehicle a second time until a split second before impact.

Second, the description of the accident, and the resulting damage to the vehicles, although certainly not determinative, raise issues of credibility as well as a triable issue of fact as to the speed that Machuca was traveling at the time of the accident.

As noted *supra*, an operator of a motor vehicle traveling with the right-of-way nonetheless has an obligation to keep a proper lookout and see what can be seen through the reasonable use of his or her senses, and to use reasonable care to avoid the accident.

Accordingly, and for the reasons cited herein, it is hereby,

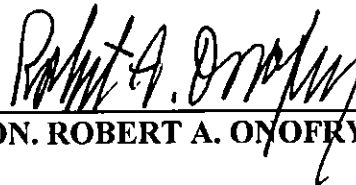
ORDERED, that the motion is denied; and it is further,

ORDERED, that the parties are directed to appear for a status conference on Tuesday, June 15, 2021, at 1:30 p.m., at the Orange County Supreme Court, Court room #3, 285 Main Street, Goshen, New York, if the Courts are open to the public at that time. If not, a virtual conference will be scheduled on said date, at a time to be determined by the Court.

The foregoing constitutes the decision and order of the Court.

Dated: May 12, 2021  
Goshen, New York

ENTER



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