

**Reefer v West**

2022 NY Slip Op 32393(U)

January 24, 2022

Supreme Court, Queens County

Docket Number: Index No. 704499/2017

Judge: Chereé A. Buggs

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Short Form Order

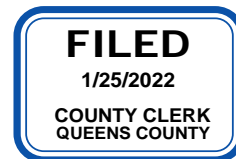
NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**  
**Justice**

IAS PART 30

-----X  
DANIEL R. REEFER,

Index No.: 704499/2017



Plaintiff,

Motion

Date: January 5, 2022

-against-

Motion Cal. No.: 14

ANDREW J. WEST and PAM AIR SERVICES, INC.  
a/k/a PAM AIR SERVICES,

Motion Sequence No.: 5

Defendants.

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The following efile papers numbered 70-85 submitted and considered on this motion by plaintiff Daniel R. Reefer (hereinafter “Plaintiff”) seeking partial summary judgment against the defendants on the issue of liability; dismissing defendants’ affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct and related relief.

	Papers <u>Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 70-78
Affirmation in Opposition-Affidavits-Exhibits.....	EF 79-83
Reply Affirmation-Affidavits-Exhibits.....	EF 84-85

Plaintiff initiated this action on April 3, 2017 with the filing of a summons and verified complaint seeking to recover damages for serious injuries that he claimed were sustained in a two-car accident which occurred on December 14, 2016 at the intersection of Horton Avenue and Rockaway Boulevard, Valley Stream, New York. Defendants Andrew J. West (hereinafter referred to as “West”) and Pam Air Services, Inc. a/k/a Pam Air Services (hereinafter referred to as “Pam Air”) filed a verified answer on June 7, 2017 denying the allegations contained in the verified complaint. West and Pam Air also served a Demand to Change Venue. Plaintiff filed a Note of Issue and Certificate of Readiness For Trial on July 2, 2021.

Plaintiff moved on October 29, 2021 for summary judgment on the issue of liability, dismissing defendants’ affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct, which has been timely filed (*see* CPLR 3212; *Brill v City of New York*, 2 NY3d 648 [2004]). In support of this motion, Plaintiff’s documentary evidence included the pleadings; his verified bill of particulars; party deposition transcripts; and, a police report.

**Plaintiff's Statement of Material Facts**

Plaintiff's Statement of Material Facts pursuant to NYCRR 202.8-g is the following

1. On the morning of December 14, 2016, Plaintiff Daniel R. Reefer was operating a 2010 Nissan motor vehicle northbound on Horton Road at its intersection with Rockaway Avenue in Valley Stream, New York.
2. The intersection of Horton Road and Rockaway Avenue is controlled by a traffic light (ie., a traffic control device indicating red, yellow, or green lights).
3. Upon coming to the aforementioned intersection, Plaintiff observed the traffic light controlling his direction of travel to be red. He therefore stopped and waited for the light to change to green. He was stopped for a period of approximately three to four minutes.
4. Upon the light controlling northbound traffic on Horton Road changing from red to green, Plaintiff proceed (sic) into the intersection.
5. When Plaintiff was approximately on quarter of the way into the intersection and while continuing straight in his lane of travel, Defendant Andrew J. West, operating a vehicle on Rockaway Avenue, operated his vehicle in such a manner as to cause contact with Plaintiff's vehicle.
6. Immediately prior to the accident occurring, Defendant was operating a 2015 Ram eastbound on Rockaway Avenue with the permission of his employer and the owner of the vehicle, Pam Air Services, Inc.
7. Defendant Andrew J. West entered into the aforementioned intersection against a red traffic light.
8. Defendant Andrew J. West admitted to responding police officers and during his Examination Before Trial that he did not see the red-light controlling traffic in his direction of travel as he proceeded eastbound on Rockaway Avenue before he entered into the intersection and consequently struck Plaintiff.
9. Defendants are therefore negligent and unable to offer a satisfactory excuse or reason sufficient to defeat Plaintiff's partial summary judgment motion as to liability.

**Plaintiff's Verified Bill of Particulars**

According to Plaintiff's verified bill of particulars, the accident herein occurred on December 14, 2016 at the intersection of Horton Avenue and Rockaway Boulevard, Village of Valley Stream, County of Nassau, State of New York. Plaintiff claimed that he was proceeding eastbound on Horton Road and that Defendant driver, West was proceeding southbound in his vehicle on Rockaway Avenue. Plaintiff claimed that there was a traffic light at the intersection. Plaintiff

claimed that West proceeded through a red light at the intersection and came into contact with his vehicle. Plaintiff also made allegations of negligence against West's employer, co-defendant Pam Air in his verified bill of particulars.

### **Plaintiff's Deposition Testimony**

Plaintiff gave sworn testimony in this matter on January 9, 2019. In relation to his testimony on the issue of liability, in sum and substance, he testified that at the time of the accident, he was operating his 2010 Nissan Murano traveling on Horton Road in Valley Stream heading northbound. He was wearing his seatbelt. He stated that the accident occurred at the intersection of Rockaway and Horton Avenue. He described Horton Avenue as a two-way street that turns into Horton Road, which becomes a one-way street, and stated that Rockaway Avenue is a two-way street. The intersection where the accident occurred is controlled by a four-way traffic light. Plaintiff testified that he stopped at the intersection for three to four minutes at a red light and proceeded when the light turned green. He intended to proceed straight and about a quarter of the way into the intersection and was operating his vehicle about two miles per hour, when a vehicle traveling eastbound on Rockaway Avenue proceeding from his left and traveling at a rate of at least forty miles per hour came into contact with his vehicle. Plaintiff described the impact as "violent", however, the airbags inside his vehicle did not deploy. Plaintiff testified that West left the scene of the accident and was located by the police around the corner from the occurrence. He stated that following the occurrence he left the scene of the accident in an ambulance and was treated at a hospital Emergency Room and released the same day. Plaintiff testified that as a result of the incident he sustained severe personal injuries.

### **Deposition Testimony of West**

West gave sworn testimony in this matter on March 6, 2019. At the time of the accident he was employed with Pam Air. He was operating a 2015 Ram vehicle owned by Pam Air in furtherance of his employment as a service mechanic for Pam Air. He testified that it was a sunny day and the road surface was dry. The accident occurred at Horton Avenue at the intersection of Rockaway Avenue. The other vehicle, which he described as a maroon SUV was traveling on Horton Avenue and he stated that his vehicle was traveling on Rockaway Avenue. He stated that there is a traffic light located at the intersection. Prior to the accident he was traveling between 30 and 35 miles per hour, and he described the traffic as light. He saw the traffic light and when he first observed it, the traffic light was green, however he did not observe the traffic light again prior to the accident. He stated that he did not see the other vehicle before the occurrence, and that there were bushes on Rockaway Avenue that prevented him from seeing the other car. He attempted to avoid the collision, but could not. He did not hear the sound of a horn or screeching of brakes prior to the accident. After impact, his passenger airbag deployed, and he described the impact as moderate. He did not totally agree with the statement attributed to him in the police report, however he admitted that a portion of the statement in the police report which stated "driver of vehicle number 1 [West] states that he was blinded by sun glare and did not see the red light and struck Vehicle 2 [Reefer]" was a statement which he made to the police at the scene of the accident. He believed that

there was a witness to the accident, a crossing guard.

## **DISCUSSION**

It is by now well settled that the party moving for summary judgment has the burden of establishing entitlement to judgment as a matter of law by tendering evidence in admissible form, eliminating any material triable issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985].) In determining a motion for summary judgment, evidence must be viewed in a light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party (see *Adams v Bruno*, 124 AD3d 566 [2d Dept 2015]). “[T]o be entitled to summary judgment on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault in establishing his or her prima facie case” (*Heard v Schade*, 172 AD3d 1335 [2d Dept 2019]; see *Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Edgerton v City of New York*, 160 AD3d 809 [2d Dept 2018]).

“A driver who has the right-of-way is entitled to anticipate that other drivers will obey the traffic laws requiring them to yield to the driver with the right of way. A driver traveling with the right-of-way may nevertheless be found partially responsible for an accident if he or she did not use reasonable care to avoid the accident. Although a driver with the right-of-way...has a duty to use reasonable care to avoid a collision... a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision.” (See *Jeong Sook Lee-Son v Doe*, 170 AD3d 973 [2d Dept 2019]; see also *Adobe v Junel*, 114 AD3d 818 [2d Dept 2014].)

## **Vehicle and Traffic Law**

Vehicle and Traffic Law § 1110 titled “Obedience to and required traffic-control devices states the following in relevant part:

(a) Every person shall obey the instructions of any official traffic-control device applicable to him placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this title...

(e) For purposes of this article, “intersection” shall include the area embracing the juncture of a highway with a private road or driveway and “intersecting roadway” shall include an intersecting private road or driveway.

Vehicle and Traffic Law § 1111 titled “Traffic-control signal indications” states the following in relevant part:

Whenever traffic is controlled by traffic-control signals, other than lane direction control signal indications provided in section eleven hundred sixteen, exhibiting different colored lights, or colored lighted arrows, successively, one at a time or in combination, only the colors green, yellow and red shall be used, and said light shall indicate and apply to drivers of vehicles and to pedestrians as follows:

(a) Green indications:

1. Traffic, except pedestrians, facing a steady circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Such traffic, including when turning right or left, shall yield the right of way to other traffic lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(d) Red indications:

1. Traffic, except pedestrians, facing a steady circular red signal, unless to make such other movement as is permitted by other indications shown at the same time, shall stop at clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in paragraph two of this subdivision.

The violation of the VTL constitutes negligence as a matter of law (*See generally Ramirez v Cruse*, 185 AD3d 1072 [2d Dept 2020]; *Watson v Narayanan*, 149 AD3d 1012 [2d Dept 2017]; *Fratello v County of Suffolk*, 96 AD3d 798 [2d Dept 2012]; *Vainer v DiSalvo*, 79 AD3d 1023 [2d Dept 2010]).

The police accident report contains West’s admission that he was blinded by sun glare and did not see the red light and struck the other vehicle (*see Johnson v Lutz*, 253 NY 124 [1930]; *Yassin v Blackman*, 188 AD3d 62 [2d Dept 2020]; *Memenza v Cole*, 131 AD3d 1020 [2d Dept 2015]).

The Court finds that Plaintiff has established with his documentary evidence entitlement to judgment as a matter of law on the issue of liability. (*See Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Lanicci v Hansen*, 153 AD3d 687 [2d Dept 2017]; *Bentick v Gatchalian*, 147 AD3d 890 [2017].)

In opposition, West and Pam Air argued that the motion should be denied as there are issues of fact related to Plaintiff’s comparative negligence and that West testified that Plaintiff was exceeding the speed limit at the time of the accident. West and Pam Air’s Response and Counter Statement of Material Facts is the following:

1. Admit.
2. Admit.
3. Deny.
4. Deny possessing sufficient information to admit or deny.
5. Deny.
6. Admit.
7. Deny possessing sufficient information to admit or deny.
8. Deny.
9. Deny. Objected to.

West and Pam Air's Statement of Undisputed Material Facts.

1. At the time and location of the accident the posted speed limit was 30 miles per hour.
2. The posted speed limit of 30 miles per hour controlled northbound traffic on Horton Road as it approaches the intersection of Rockaway Avenue in Valley Stream, New York.
3. At the time and place of the accident plaintiff Daniel R. Reefer had a duty to exercise reasonable care in the operation of his vehicle even while entering an intersection with a green light.
4. The weather was clear at the time and location of the accident.
5. Plaintiff Daniel R. Reefer did not observe defendant's vehicle prior to the impact.

West and Pam Air claimed that Plaintiff violated the Village of Valley Stream Code Section 93.1 which they alleged states the following:

No person shall drive or operate any motor vehicle or motorcycle upon any public highway in the Village of Valley Stream at a rate of speed in excess of 30 miles per hour, except on State Highway No. 27 (Sunrise Highway) between the westerly Village line and the easterly Village line, on which highway the speed limit shall be 40 miles per hour.

West and Pam also claimed that Plaintiff violated Vehicle and Traffic Law Section 1180 which states as follow:

- (a) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.
- (d)... whenever maximum speed limits... have been established

... no person shall drive in excess of such maximum speed limits at any time.

They also claim that there is an issue of fact as to whether Plaintiff exercised his common law duty of care. Pattern Jury Instruction (PJI) 2:77.1 states:

A driver is charged with the duty to see that which under the facts and circumstances he should have seen by the proper use of his senses, and if you find that plaintiff did not observe that which was there to be seen you may find that he was negligent in failing to look or in not looking carefully.

PJI 2:79 states in relevant part:

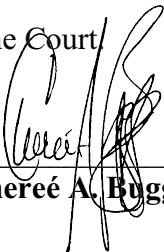
A driver who has a green light must still use reasonable care under the circumstances. Thus, if the driver saw or should have seen another vehicle in the intersection or so near the intersection that a collision was likely to occur, the driver was required to use reasonable care to avoid the collision.

The Court finds that West and Pam Air failed to raise a triable issue of fact by demonstrating that Plaintiff was speeding in excess of the posted speed limit of 30 miles per hour and therefore was comparatively negligent for failing to see their vehicle prior to the accident. Plaintiff submitted reply papers and a statement of material facts which sufficiently countered West and Pam Air's opposing arguments. West, the driver of the Pam Air's vehicle testified that he did not see the other vehicle prior to the accident thus he could not determine the speed Plaintiff's vehicle was traveling and he also admitted that he did not see that he had a red light in his direction at the intersection prior to the occurrence. His testimony that the Plaintiff's vehicle was traveling between 30 and 40 miles per hour is speculative as he testified that he did not know the rate of speed that the other vehicle was traveling. Plaintiff testified that he entered the intersection from a stopped position and that at the time of impact he was traveling at a rate of speed of two miles per hour, under the speed limit. There was no testimony submitted herein that West was already in the intersection at the time of the occurrence. West also testified that he was traveling 30 or 35 miles per hour, the Court notes that 35 miles per hour would have been a rate of speed in excess of the posted speed limit (*see* VTL 1180). Plaintiff proceeded in the intersection with the right of way.

Therefore, plaintiff's motion for partial summary judgment pursuant to CPLR 3212 on the issue of liability is granted in its entirety. This matter shall proceed to Trial on the issue of damages only.

The foregoing constitutes the decision and Order of the Court

Dated: January 24, 2022

  
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**Hon. Chereé A. Buggs, JSC**

