

**Sheffield v IF USA Inc.**

2022 NY Slip Op 34848(U)

March 2, 2022

Supreme Court, Kings County

Docket Number: Index No. 502049/2019

Judge: Lisa S. Ottley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS – PART 24

KINGS COUNTY CLERK  
FILED

2022 MAR 22 AM 9:12

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TANYA SHEFFIELD,

Plaintiff,

Index # 502049/2019

-against-

**CORRECTED ORDER<sup>1</sup>**

IF USA INC., PETR SHAFROSTOV and KEYUE CHEN,

Motion Seq. #s 2, 3, 4 & 5

Defendants.  
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**HON. LISA S. OTTLEY**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motions and Cross-Motion argued and submitted on February 23, 2022.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1&2 [Exh. A-G]
Notice of Motion and Affidavits Annexed.....	3&4 [Exh. A-D]; 5&6 [A-F]
Notice of Cross-Motion and Affidavits Annexed.....	10&11 [Exh. A-Q]
Answering Affidavits.....	8; 12 and 13
Replying Affidavit.....	9; 14
Memorandum of Law.....	7

Upon the foregoing cited papers, oral argument, careful review of the moving papers and opposition thereto, the court finds as follows:

This is an action commenced by plaintiff, Tanya Sheffield, who allegedly sustained injuries, as a result of a motor vehicle accident that occurred on March 22, 2018. Plaintiff was a passenger in a taxicab driven by defendant, Petr Safrostov, and owned by co-defendant, IF USA Inc. Co-defendant, Keyue Chen was the operator of the vehicle that made contact with co-defendants' vehicle while Peter Shafrostov was attempting to make a U-turn into traffic.

The motions for summary judgment filed by the defendant, If USA Inc., and Petr Shafrostov, and co-defendant, Keyue Chen on the issue of serious injury, are hereby denied in the entirety, as there are issues of fact. The defendants' submissions failed to eliminate triable issues of fact as to whether the plaintiff sustained a serious injury under the 90/180 day category of the Insurance Law §5102(d). See, *Rodriguez v. Areloina*, 137 A.D.3d 892, 26 N.Y.S.3d 598 (2<sup>nd</sup> Dept., 2016).

<sup>1</sup> . The Order is corrected to reflect the proper Motion Sequence #s which are 2, 3, 4 and 5 as opposed to 1-4.

Defendant, Chen's motion for summary judgment on the issue of liability is hereby denied. Defendant Chen argues that co-defendant who was stopped with the vehicle partly in a parking lane and partly in a driving lane on Surf Avenue, made a U turn from the parking space causing a collision with Chen's vehicle which was proceeding in the travel lane on Surf Avenue. The defendants, IF USA Inc., and Petr Shafrostov, as well as co-defendant, Keyue Chen have been precluded from offering testimony at the time of trial and/or offering affidavits in response to substantive motions, pursuant to the Hon. Edgar Walker's Order dated March 2, 2020. As a result, defendant, Chen is relying on the deposition testimony of the plaintiff, who was the passenger in the taxi at the time of the accident, who testified that Petr Shafrostov, the operator of co-defendant's vehicle, was looking towards the dashboard where a movie was playing on his cellphone rather than looking for oncoming traffic before making his U-turn.

Vehicle and Traffic Law §1143 provides that "[t]he 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."

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. See, Desio v. Cerebral Palsy Transport, Inc., 121 A.D.3d 1033, 994 N.Y.S.2d 681 (2<sup>nd</sup> Dept., 2014), citing, Williams v. Hayes, 103 A.D.3d 713, 959 N.Y.S.2d 713; see, Adobea v. Junel, 114 A.D.3d 818, 980 N.Y.S.2d 564; Figueroa v. Diaz, 107 A.D.3d 754, 967 N.Y.S.2d 109; Rahaman v. Abodeledhman, 64 A.D.3d 552, 883 N.Y.S.2d 259; see also, Dimou v. Iatauro, 72 A.D.3d 732, 899 N.Y.S.2d 308. A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law. Desio v. Cerebral Palsy Transport, Inc., *supra*. While there can be more than one proximate cause of an accident, (see, Adobea v. Junel, *supra*), each driver has a duty to exercise reasonable care under the circumstances to avoid an accident. Even where there is evidence that another driver involved in the accident was negligent as a matter of law, due to a violation of the Vehicle and Traffic Law, the party seeking summary judgment must establish freedom from comparative negligence as a matter of law. Thus, the driver traveling with the right of way may be found to have contributed to the happening of the accident, if he or she, did not use reasonable care to avoid the accident. See, Adobea v. Junel, *supra*.

Here, in support of her motion for summary judgment on the issue of liability, the co-defendant, Keyue Chen submitted the transcript of plaintiff, Tanya Sheffield's deposition, who testified that the co-defendant, Petr Shafrostov failed to look for oncoming traffic before making his U-turn. The co-defendant, Petr Shafrostov has not offered any evidence to rebut the plaintiff's deposition testimony, which established that he violated Vehicle and Traffic Law §1143. However, in opposition to defendant, Chen's motion for summary judgment on the issue of liability, the plaintiff argues that Chen did not exercise reasonable care under the circumstances to avoid the accident. Plaintiff testified that

the impact of the collision was “so heavy that it knocked the Shafrostov vehicle all the way back to its original parked position 45 degrees to the right.” On the day of the accident, the roads were wet and covered with slush. Plaintiff argues that defendant, Chen violated Vehicle and Traffic Law 1180(a) which provides as follows: “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.” Chen’s reliance on plaintiff’s testimony to support her motion for summary judgment fails to establish her *prima facie* entitlement to summary judgment as a matter of law. The plaintiff’s deposition testimony as to the accident raises issues of fact as to the proximate cause of the accident and the liability of the operators of the vehicles involved in the accident.

Accordingly, defendant Chen’s motion for summary judgment on the issue of liability as it relates to Keyue Chen, is hereby denied.

Next, this court will address plaintiff’s cross-motion for summary judgment on the issue of serious injury, liability against both defendants and the striking of the affirmative defense asserted by defendants of culpable conduct on the part of the plaintiff is granted in part and denied in part. As to the issue of serious injury, there are issues of fact as to whether plaintiff sustained a serious injury under the 90/180 day category pursuant to Insurance Law §5102(d).

As to the issue of liability, the court finds that the plaintiff is entitled to summary judgment. Although the defendants, IF USA Inc., and Petr Shafrostov argue that there are issues of comparative negligence as between the two defendant drivers, the right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between the two drivers. *See, Romain v. City of New York*, 177 A.D.3d 590, 112 N.Y.S.3d 162 (2<sup>nd</sup> Dept., 2019). It is uncontroverted that the plaintiff was an innocent passenger seated in the rear passenger seat of the taxicab when the vehicle she was in made a U-turn into traffic. Neither driver of the two vehicles involved in the subject accident have suggested that the plaintiff bore any fault in the happening of the accident.

Accordingly, plaintiff is entitled to summary judgment on the issue of liability against both defendants, and the affirmative defense of culpable conduct on the part of plaintiff is hereby dismissed.


Motion Sequence #2 filed by defendants, IF USA Inc., and Petr Shafrostov is hereby denied in its entirety.

Motion Sequence #3 and #4 filed by co-defendant, Keyue Chen on the issue of serious injury (#3) is hereby denied; and on the issue of liability (#4) is hereby denied.

Motion Sequence #5 filed by plaintiff, Tanya Sheffield is hereby granted in part and denied in part. There are issues of fact as to whether plaintiff suffered a serious injury pursuant to §5102(d), therefore summary judgment is denied. Summary judgment is granted in favor of plaintiff on the issue of liability and the affirmative defense of culpable conduct on the part of plaintiff, asserted by defendants is stricken.

This constitutes the Order of this Court.

Dated: Brooklyn, New York  
March 2, 2022

  
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HON. LISA S. OTTLEY, J.S.C.  
**HON. LISA S. OTTLEY**

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