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| <b>Abreu v Anglin</b>                                                                                                                                                                                                          |
| 2022 NY Slip Op 35156(U)                                                                                                                                                                                                       |
| February 23, 2022                                                                                                                                                                                                              |
| Supreme Court, Bronx County                                                                                                                                                                                                    |
| Docket Number: Index No. 27145/2020E                                                                                                                                                                                           |
| Judge: Veronica G. Hummel                                                                                                                                                                                                      |
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, IAS PART 31**

MARELYN M. ABREU,

Plaintiff,

-against-

MARIE S. ANGLIN,

Defendant.

**Index No. 27145/2020E****HON. VERONICA G. HUMMEL, A.J.S.C.****Mot. Seq. No. 1**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to defendant MARELYN M. ABREU's ("Defendant") motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them summary judgment dismissing the complaint and any and all cross-claims against her on the basis that she did not breach any duty owed to the plaintiff MARIE S. ANGLIN ("Plaintiff").

This is a personal-injury action arising out of a two-vehicle accident that occurred on October 22, 2018, in the intersection of Barnes Avenue and East 217<sup>th</sup> Street in the Bronx, New York (the "Accident").

In support of the motion, Defendant submits an attorney affirmation; a Statement of Material Facts; a copy of the pleadings; and the transcripts of the depositions of Plaintiff and Defendant.

Defendant testified that, on October 22, 2018, at approximately 8:00 p.m., she was driving her vehicle alone on Barnes Avenue after leaving her sister's home on the same street. Prior to the Accident, she was traveling no more than 20 miles per hour, her headlights were on, and she was not using her cellphone or playing any video. Barnes Avenue is a one-way street, and there was no traffic at the time. Visibility was clear. At the intersection of Barnes Avenue and East 217<sup>th</sup> Street, Barnes Avenue is not regulated by a stop sign or another traffic-control device, but East 217<sup>th</sup> Street is regulated by a stop sign. As Defendant approached that intersection, she saw Plaintiff's vehicle for the first time as it entered the intersection from 217<sup>th</sup> Street, approximately 2 or 3 seconds before the Accident occurred. Defendant applied her brakes but could not avoid coming into contact with Plaintiff's vehicle. The impact between the vehicles totaled Defendant's vehicle.

Plaintiff testified that, on October 22, 2018, at approximately 7:30-8:00 p.m., she was driving her vehicle on East 217<sup>th</sup> Street with her son and daughter seated in the back. It was a clear, cold evening, without any precipitation of any kind. East 217<sup>th</sup> Street is a single-lane, one-way street, and it is controlled by a stop sign at its intersection with Barnes Avenue. Plaintiff brought her vehicle to a complete stop at that stop sign behind the white line. Traffic on Barnes Avenue, which is also a single-lane, one-way street, passed from Plaintiff's right to left. Vehicle parking is along Barnes Avenue on the side of the street where Plaintiff was stopped at the stop sign. When Plaintiff first stopped at the stop sign on East 217<sup>th</sup> Street, she saw a vehicle traveling along Barnes Avenue and let it pass, as, according to her, it "had the right-of-way." She then proceeded to slowly move her vehicle forward, due to the blindspot created by parked cars at the corner and the darkness of the surrounding area, looking left and right to see if another car was approaching the intersection. She did not see another vehicle approaching, so she entered the intersection, intending to travel straight across Barnes Avenue and continue along East 217<sup>th</sup> Street. While in the middle of the intersection, Plaintiff was struck in the right passenger side of her vehicle by Defendant's vehicle, pushing Plaintiff's vehicle to the left. The impact was heavy. Plaintiff immediately stopped her vehicle after being hit. Plaintiff's son exited the vehicle and screamed, "[M]om, that car wasn't there. That car came out of the parking space." He also told Plaintiff, "I thought that person was going to stop. It came out of nowhere, and it was speeding." The speed limit on Barnes Avenue where the Accident occurred was 20 or 25 miles per hour, because it is a school zone. Police were called to the scene. Plaintiff was taken to a hospital, and her children accompanied her in the ambulance.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that they are free from fault. *Hilago v. Vasquez*, 187 A.D.3d 683, 684 (1st Dep't 2020); *Harrigan v. Sow*, 165 A.D.3d 463, 464 (1st Dep't 2018). In order for a defendant driver to establish entitlement to summary judgment on the

issue of liability in a motor-vehicle-collision case, therefore, the driver must demonstrate, *prima facie*, that she kept the proper lookout, or that her alleged negligence, if any, did not contribute to the accident. *Hilago*, 187 A.D.3d at 684; *Harrigan*, 165 A.D.3d at 464.

Defendant argues that Plaintiff's conduct is the sole proximate cause of the Accident and constitutes negligence *per se* because she violated Vehicle and Traffic Law ("VTL") §§ 1142(a) and 1172(a). VTL § 1142(a) provides:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two 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.

And VTL § 1172(a) provides:

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a 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 the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

Here, although Defendant demonstrated that her travel through the intersection of Barnes Avenue and East 217<sup>th</sup> Street was not regulated by a traffic-control device, and that Plaintiff's was, Plaintiff has nevertheless raised issues of fact requiring denial of the motion. The record in this case presents disputed factual issues similar to those that led the First Department to deny summary judgment in *Nevarez v. S.R.M. Management Corp.*, 58 A.D.3d 295, 297-98 (1st Dep't 2008) (internal citations omitted):

Here . . . plaintiff has raised an issue of fact as to whether Rodriguez had the right-of-way. Plaintiff testified not only that she stopped at the stop sign, but that she observed no cars at or near the other side of the intersection before she proceeded to drive into the intersection. While Rodriguez testified that he had the right-of-way at the time he entered the intersection, the dispute about which car arrived at and left the intersection first raises factual issues to be resolved by the trier of fact. The jury is free to reject Rodriguez's allegations that plaintiff failed to properly yield to crossing traffic before proceeding into the intersection and attribute the cause of the

accident to Rodriguez's conduct of entering the intersection when he did not have the right-of-way.

Even if defendants had presented irrefutable evidence that Rodriguez had the right-of-way, they would not have been entitled to summary judgment because the record demonstrates questions of fact as to Rodriguez's comparative negligence. "[U]nder the doctrine of comparative negligence, a driver who lawfully enters an intersection . . . may still be found partially at fault for an accident if he or she fails to use reasonable care to avoid a collision with another vehicle in the intersection."

These conflicting versions of the accident also raise issues of fact as to whether Rodriguez failed to use reasonable care to avoid the collision. Indeed, it is undisputed that Rodriguez's vehicle broadsided plaintiff's vehicle, which creates a reasonable probability that plaintiff's car had crossed the intersection first. If plaintiff's vehicle had already started to enter the intersection when Rodriguez approached it, Rodriguez had a duty to use reasonable care to avoid the collision.

*See also Luciano-Mahoney v. Rossman*, 191 A.D.3d 604 (1st Dep't 2021); *Raposo v. Robinson*, 106 A.D.3d 593 (1st Dep't 2013) ("Notwithstanding that defendant's approach into the intersection was regulated by a stop sign and no traffic control devices regulated plaintiff's approach, issues of fact preclude summary judgment, including which vehicle entered the intersection first, which driver had the right-of-way, and whether the driver with the right-of-way exercised reasonable care to avoid the accident."). Here, there a similar questions as to which of the parties entered the intersection first—as demonstrated by Plaintiff's testimony that she did not see Defendant's vehicle prior to entering the intersection and that Plaintiff's vehicle was essentially broadsided by Defendant's vehicle—and whether the parties exercised their duty to use reasonable care to avoid the Accident.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

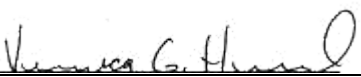
Accordingly, it is hereby:

**ORDERED** that defendant MARELYN M. ABREU's motion (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting them summary judgment dismissing the complaint and any and all cross-claims against them is **DENIED**; and it is further

**ORDERED** that the Clerk shall mark the motion (Seq. No. 1) disposed in all Court records.

This constitutes the decision and order of the Court.

**Dated: February 23, 2022**

**Hon.**   
**VERONICA G. HUMMEL, A.J.S.C.**

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1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
- ☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
- ☐ CONVERT TO ELECTRONIC FILING ☐ EDIT CAPTION