

<b>Moya v City of New York</b>
2023 NY Slip Op 30377(U)
February 7, 2023
Supreme Court, New York County
Docket Number: Index No. 157666/2013
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. JUDY H. KIM **PART** **05RCP**

*Justice*

-----X

JULIE MOYA,

Plaintiff,

- v -

CITY OF NEW YORK, WILLIAM C. GOMEZ, CRISTAL M.  
WATERMAN AS ADMINISTRATOR OF THE ESTATE OF  
STEVE T. WATERMAN, CRISTAL M. WATERMAN

Defendants.

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**INDEX NO.** 157666/2013

**MOTION DATE** 11/15/2022

**MOTION SEQ. NO.** 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157

were read on this motion for JUDGMENT - SUMMARY.

Upon the foregoing papers, the City of New York's motion for summary judgment is denied for the reasons set forth below.

This personal injury action arises out of a June 27, 2012 automobile collision at the intersection of Riverside Drive's service road and West 113th Street involving a car operated by defendant Cristal M. Waterman, in which plaintiff was a passenger, and a second car owned and operated by defendant William C. Gomez.

At his deposition, Gomez testified that immediately prior to the collision he was driving west on West 113th Street, a one-way street with a single lane, and observed that the traffic light at the intersection of Riverside Drive and West 113th Street was green and remained green as he traveled through the intersection at approximately eighteen miles per hour (NYSCEF Doc. No. 140 at pp. 19, 21, 30-31). His car then collided with Waterman's vehicle, which, according to

Gomez, had not stopped at the stop sign on Riverside Drive before entering the intersection (Id. at pp. 34).

At her deposition, Cristal M. Waterman testified that she was driving north on Riverside Drive's service road when she came to the stop sign at the subject intersection, at which point she stopped, looked to her right and left and proceeded once she saw that the intersection was clear (NYSCEF Doc. No. 141 [Waterman EBT at pp. 24-26]). Waterman testified that she first saw Gomez's car when she was in the middle of the intersection, at which point it was less than a foot away from her car (Id. at pp. 29-30, 49). Waterman testified that she believed Gomez had accelerated to beat a red light (Id. at p. 32).

As pertinent here, plaintiff alleges that the motor vehicle collision was the result of the negligence of defendant the City of New York (the "City") "in permitting traffic traveling Northbound on Riverside Drive to be controlled by a stop sign while ... permitting traffic travelling Westbound on 113th Street at that intersection to be controlled by a traffic light, thereby creating confusion" (NYSCEF Doc. No. 132 [Complaint]). More specifically, "[t]he City's coupling of a stop sign and a traffic light created an unreasonably dangerous driving condition where two drivers, obeying their respective traffic controls, could reasonably believe they each had the right-of-way [when] ... the red light turned to green as the driver approached on West 113th Street, and the vehicle on Riverside Drive had already stopped at the stop sign" (NYSCEF Doc. No. 151 [Mills Affirm. in Opp. at ¶5]).

The City now moves for summary judgment dismissing the complaint as against it. The City first argues that, regardless of whether it was negligent in the design of the subject intersection, the deposition testimony of Waterman and Gomez establishes that the negligence of one or both drivers were the sole proximate cause of the collision, as under either driver's version

of events, Waterman failed to stop at the stop sign or Gomez sped through the intersection to beat a red light.

The City also contends that a 2001 traffic study of the subject intersection conducted by the New York City Department of Transportation (“DOT”) Intersection Control Unit (“ICU”) confers upon the City a qualified immunity from liability in this action absent any post-traffic study notice of a dangerous condition at that intersection. The ICU’s traffic study was precipitated by a complaint to the Office of the Comptroller by one Michael Paplin on or around November 15, 2000, in which Paplin wrote:

There is a very dangerous traffic situation on the upper Riverside Drive. There are only stop signs at each comer between 110th street and 114th street ... Most vehicles using the upper drive are traveling at an unsafe rate for a residential street adjacent to a park. In additions, the Bank Street College is located on 112th Street and many of the students come off buses on Riverside drive and walk across the upper drive to get to the school. With car after car rolling through the stop sign, it is only a matter of time until someone is seriously injured. There have already been problems with dogs getting hit while crossing the street with their owners. As a means to prevent this problem I would like to suggest that more stop signs be added to all the comers, the intersections be ‘boxed’ out to make them visible and speed bumps be installed to limit the speed of the vehicles using the upper drive. There is not enough traffic to warrant a stop light, however, speed bumps would force all drivers to decelerate through the area.

(NYSCEF Doc. No. 149 [Traffic Study at p. 7] [emphasis added]).

Manhattan Borough Commissioner Joseph G. Albano responded to Paplin in multiple letters, including a letter dated April 12, 2001, stating:

We completed our analyses earlier this month at the intersections of Riverside Drive with Cathedral Parkway/West 110th and West 112th Streets. Factors such as vehicular and pedestrian volumes, accident experience, vehicular speeds, visibility and signal spacing were all taken into consideration in making a determination. Based upon the evaluation of the data collected, it is our judgment that All-Way Stop controls are unwarranted at this time. In regards to Riverside Drive at West 111th Street, an All-Way Stop control exists and at Riverside Drive at West 113th and West 114th Streets traffic signals exist.

(Id. at p. 10).

In support of its motion, the City submits the traffic study in question which includes, inter alia, various diagrams of the subject intersection, and MV-104 Police Accident Reports for the subject intersection (Id.). The City also submits an affidavit from Roumany Wasef, an employee of the ICU, dated May 27, 2022, in which he attests:

I reviewed the 2001 traffic study for the intersection of West 113th Street and Riverside Drive, City, County and State of New York ... Based upon my review of the study, the ICU evaluated the intersection and made the determination that no changes needed to be made with respect to signals and signage. ICU made a further determination that additional controls were not warranted at the intersection of Riverside Drive and West 113th Street and that the stop sign at the end of the service road on Riverside Drive near its intersection with West 113th Street was sufficient. In making this decision, ICU considered the vehicular and pedestrian volumes, number of accidents, vehicular speeds, visibility, signal spacing and the Manual on Uniform Traffic Control Devices (“MUTCD”). Based upon those considerations, ICU determined that the placement of the traffic signal and stop sign maintained pedestrian and vehicular safety at this intersection.

Additionally, based on my review of the 2001 ICU study, all-way stop controls were not warranted at the intersection of Riverside Drive and West 113th Street, City County and State of New York because the 2001 data revealed that the intersection did not meet the criteria for all-way stop signs under the MUTCD.

(NYSCEF Doc. No. 145 [Wasef Aff. at ¶¶3-4]).

The City argues that the traffic study establishes its qualified immunity from suit and that it never received notice of any danger created by its traffic control devices at the subject intersection after the traffic study to vitiate this qualified immunity. In support of this argument, it submits the affidavit of Samir Gorgy, Highway Transportation Specialist of DOT’s Traffic Planning Office of Research, Implementation, and Safety Unit. Gorgy attests that his search of the DOT’s Accident Location Information System for accidents occurring at the intersection of Riverside Drive and West 113th Street between June 27, 2000 and June 27, 2012 produced twenty accident reports (NYSCEF Doc. No. 146 [Gorgy Aff. at ¶¶2-3]). Of these, Gorgy attests, fourteen

involved motor vehicle collisions, two were collisions involving pedestrians, two of which were collisions involving a fixed object, one collision with a curb, and one collision with a median barrier end (Id. at ¶¶2-3). However, only two of these referenced accident reports—from 2008 and 2009, respectively—are attached as an exhibit to Gorgy’s affidavit (See NYSCEF Doc. Nos. 147 [Crash Data]). The City argues that none of these post-traffic survey motor vehicle collisions are sufficiently similar to the collision at issue here to vitiate the City’s qualified immunity.

Plaintiff and co-defendant Cristal M. Waterman oppose the City’s motion. They argue that the proximate cause of the collision is an issue for the jury where, as here, the evidence of the cause of the accident in the record is disputed. They also take issue with the City’s qualified immunity argument, noting that Wasef testified at his March 25, 2021 deposition that the traffic study was limited to confirming whether traffic signals existed at the intersection and did not determine whether the traffic signals in place at that time were appropriate (See NYSCEF Doc. No. 142 [Wasef EBT at pp. 108, 119-121, 143, 189-190, 194]). They further argue that, even if the traffic study established the City’s qualified immunity, reports of subsequent accidents produced by the City are sufficiently similar to collision at issue here to raise issue of fact as to whether any such qualified immunity was vitiated. They also note that in 2016, a New York City Police Department officer filed a complaint regarding the combination of the stop sign and traffic light at the subject intersection, after which the stop sign was removed and a four-way traffic light installed (NYSCEF Doc. Nos. 143 [City’s Supplemental Response at p. 30] and 1479 [Traffic Study at p. 55]).

In reply, the City argues that none of these accident reports indicate that an accident was caused due to the configuration of the traffic control devices at the subject incident.

## DISCUSSION

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

The City has not demonstrated its prima facie entitlement to judgment as a matter of law on the issue of proximate cause. Even crediting the City’s argument that Waterman or Gomez were negligent, negligence on the part of a driver does not preclude the City’s liability. “The City’s negligence can still be a concurring cause along with a driver’s negligence where it increased the likelihood of an accident” (Vasquez v Figueroa, 262 AD2d 179, 182 [1st Dept 1999] [internal citations omitted]) and the City has not established, at this juncture, that the placement of a stop sign instead of a traffic light did not “contribute[ ] to the happening of the accident by materially increasing the risk” (Langer v Xenias, 134 AD3d 906, 908 [2d Dept 2015] [internal citations and quotations omitted]). Indeed, Wasef acknowledged at his deposition that had north-south and east-west traffic at the intersection been governed by a traffic light, the instant collision might have been avoided (See NYSCEF Doc. No. 142 [Wasef EBT at p. 143]).

Neither has the City established that it is entitled to qualified immunity based on the traffic study. While a municipality owes the public an absolute nondelegable duty to keep its streets in a

reasonably safe condition, this duty “is measured by the courts with consideration given to the proper limits on intrusion into the municipality’s planning and decision-making functions” (Friedman v State of New York, 67 NY2d 271, 283 [1986] [internal citations and quotations omitted]). Accordingly, “in the field of traffic design engineering, a municipality is accorded a qualified immunity from liability arising out of a highway planning decision” (Id.; see also Turturro v City of New York, 77 AD3d 732, 735 [2010]) as long as it demonstrates that “the relevant discretionary determination by the governmental body was the result of a deliberative decision-making process” (Petronic v City of New York, 211 AD3d 862, 863 [2d Dept 2022] [internal citations and quotations omitted]) i.e., the governmental planning body “has entertained and passed on the very same question of risk as would ordinarily go to the jury” (Turturro v City of New York, 77 AD3d 732, 735 [2010] quoting Weiss v Fote, 7 NY2d 579, 588 [1960]). However, “[s]uch presumptive immunity can be overcome by notice of a history of accidents at the site” (Id.). “Once [the municipality] is made aware of a dangerous traffic condition, it must undertake reasonable study thereof with an eye toward alleviating the danger” (Chunhye Kang-Kim v City of New York, 29 AD3d 57, 59 [1st Dept 2006]).

The City argues that the 2001 traffic study establishes that it considered whether the placement of the stop sign and traffic light were properly placed at the subject intersection, thereby immunizing it from liability here. Although Wasef’s affidavit states as much, this characterization of the study is undermined by his deposition testimony, in which he testified that the traffic study determined only that traffic control devices were present at the intersection, without any further evaluation. The scope of the traffic study, as described by Wasef at his deposition, did not address the “same question of risk” at issue here, i.e., whether the combination of the traffic light and stop

sign created confusion leading to automobile collisions. Ultimately, the contradictions between Wasef's deposition testimony and his affidavit, executed over a year after his deposition, creates triable issues of fact (See Turturro v City of New York, 77 AD3d 732, 736 [2d Dept 2010]).

In any event, even assuming, for the sake of argument, that the traffic study established the City's qualified immunity, issues of fact exist as to whether the City had notice of a dangerous condition at the subject intersection after the traffic study was completed. In determining whether such notice existed, the "analysis turns on the details surrounding the accident" and whether the "relevant conditions surrounding those prior accidents ... were substantially similar to those surrounding the subject accident" (Benjamin v City of New York, 55 Misc 3d 1217(A) [Sup Ct, NY County 2017], affd, 178 AD3d 557 [1st Dept 2019]).

Here, a triable question of fact exists as to whether the surrounding circumstances of the post-traffic study police accident reports produced by the City in 2008, is substantially similar to those here, as the MV-104 for that 2008 collision involved a driver with a green light who collided with a driver who "disregarded" the stop sign on Riverside Drive (See NYSCEF Doc. No. 147 [Police Accident Reports at pp. 2-3]), the precise facts alleged by Gomez in his deposition<sup>1</sup> (See Benjamin v City of New York, 55 Misc 3d 1217(A) [Sup Ct, NY County 2017], affd, 178 AD3d 557 [1st Dept 2019] ["one similar accident can satisfy the burden of placing the City on notice of a dangerous condition"]). The Court does not credit the City's argument that this 2008 collision cannot provide prior notice because the MV-104 does not "suggest the incident was caused by the design of the intersection itself" (NYSCEF Doc. No. 157 [D' Cunha-Rubin Affirm. at ¶7]). In light of the information available, the collisions appear to be of the same general character such that an

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<sup>1</sup> The Court agrees with the City that plaintiff may not rely on Officer Attardo's complaint in 2016 concerning the intersection or any evidence of subsequent remedial measures or precautions taken after subject collision to establish the City's negligence (See e.g., Poplawski v 111 Wall St. LLC, 211 AD3d 593 [1st Dept 2022]).

issue of fact exists (Compare Brown v State, 79 AD3d 1579 [4th Dept 2010] [“at least 17 right-angle accidents involving failure to yield the right-of-way as a contributing factor occurred at the intersection between August 1996 and June 20” provided prior notice] aff’d 31 NY3d 514 [2018] with Chunhye Kang-Kim v City of New York, 29 AD3d 57, 58 [1st Dept 2006] [plaintiff failed to carry burden at trial where none of the prior accidents involved a vehicle hitting a pedestrian or bicyclist on the sidewalk adjoining the park or anywhere near the sidewalk, as was the case in the subject accident]).

In short, “whether the City’s negligence was a substantial factor in causing the accident ... and whether the City was entitled to qualified immunity based on its response to those ... complaints, [are] both issues to be resolved by the jury” (Turturro v City of New York, 28 NY3d 469, 482-83 [2016]).

Accordingly, it is

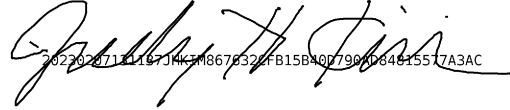
**ORDERED** that the City of New York’s motion for summary judgment is denied; and it is further

**ORDERED** that, within twenty days of the date of this decision and order, plaintiff shall serve a copy of this decision and order, with notice of entry, upon all defendants as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the

“E Filing” page on this court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.



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2/7/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE