

<b>Maziejka v Lieberman</b>
2024 NY Slip Op 35099(U)
December 4, 2024
Supreme Court, Queens County
Docket Number: Index No. 726183/2021
Judge: Leonard Livote
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**SHORT FORM ORDER**

SHORT FORM ORDER  
NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Leonard Livote  
Supreme Court Justice

IAS PART 33

-----X  
PATRICIA L. MAZIEJKA,

Index No: 726183/2021

Plaintiff,



Motion Date: 11/28/23

-against-

MICHAEL LIEBERMAN,

Seq. No: 1

Defendants.

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The following papers numbered below read on plaintiff Patricia L. Maziejka’s motion for an Order, pursuant to CPLR §3212 granting summary judgment (1) on the issue of liability in favor plaintiff and (2) dismissing defendant’s affirmative defenses based upon theories of contributory negligence on the part of plaintiff, and granting such other and further relief as this Court shall deem just and proper.

PAPERS  
NUMBERED

Defendant Podolnick’s Notice of Motion, Affirmation, Affidavits and Exhibits.....	EF12 – 13, 15 - 19
Notice of Cross-motion, Affirmation, Affidavits and Exhibits.....	
Answering Affirmations, Affidavits And Exhibits.....	EF20 - 21
Reply Affirmations, Affidavits And Exhibits.....	EF22 - 23
Other .....	EF14

Plaintiff’s motion is determined as follows.

On November 23, 2021, plaintiff Patricia L. Maziejka commenced this action with the filing of a Summons and Complaint, to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on November 18, 2021, that plaintiff alleges was caused by defendant Michael Lieberman’s negligence. Thereafter, issue was joined by defendant’s Answer which contains, *inter alia*, an affirmative defense of comparative negligence.

Plaintiff moves for summary judgment on the issue of liability in favor of plaintiff and for an Order dismissing defendant's affirmative defenses based upon theories of contributory negligence on the part of plaintiff. It is her position that defendant was negligent per se because he violated Vehicle and Traffic Law § 1128(a). Plaintiff relies on a certified Police Accident Report which she claims lists defendant as being the sole contributing cause of this accident.

Defendant opposes the motion for summary judgment on the basis that plaintiff may have been speeding and may have been under the influence of the prescription medications she admits she took the night before. Defendant claims that he checked his mirror and put on his signal and when he saw no vehicle was to his right, he began to change lanes when the impact occurred.

According to plaintiff's deposition testimony, on November 18, 2021, plaintiff was traveling east in the right lane on Northern Boulevard in Nassau County, New York, near a Rallye Motors car dealership. She says she was traveling at approximately thirty-five (35) to forty (40) miles per hour. She was traveling from her home in Port Washington, New York, heading east to her son's home in East Norwich, New York. She testified that she remained in the right lane of travel. Plaintiff testified that she heard a bang, and her vehicle was broadsided when another vehicle hit her vehicle's driver's side door. She testified that the force of the impact was heavy, and her vehicle spun around. She stated that she lost consciousness then woke up with her airbag deployed. According to plaintiff, the right passenger side front-end of the other vehicle met her driver's side door. Plaintiff was taken to the hospital by ambulance from the scene.

In his deposition testimony, defendant Michael Lieberman indicated that on November 18, 2021, approximately 8:30a.m. to 9:00a.m., he left his home in Roslyn, New York, was traveling west on Northern Boulevard, driving at the rate of twenty (20) to twenty-five (25) miles per hour, to his office which is located at 1615 Northern Boulevard, Manhasset, New York. According to defendant, there was a large divider separating the two lanes traveling east and two lanes west and there was a bend in the road. Defendant testified that he put on his blinker to change lanes into the right lane and looked into his sideview mirror and did not see any other vehicle. He testified he then started to change lanes and felt the impact of the collision. Defendant opined that plaintiff must have been speeding because the first time her saw her vehicle, was when the accident occurred.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues" (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *Bonaventura v Galpin*, 119 AD3d 625 [2d Dept 2014]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to a judgment as a matter of law, presenting the Court with sufficient evidence in admissible form to eliminate any material issues of fact from the case (see *Gaddy v Eyler*, 79 NY2d 955 [1992]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324

[1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Glassman v Caremount Med., P.C.*, 226 AD3d 878, 880 [2d Dept 2024]).

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Ramirez v Wangdu*, 195 AD3d 646 [2d Dept 2021]). A plaintiff is no longer required to show freedom from comparative fault in establishing their prima facie case against a defendant on the issue of that defendant's liability (*Rodriguez v City of New York*, 31 NY3d at 312; *Plazas v Sherlock, Inc.*, 228 AD3d 787 [2d Dept 2024]). The issue of a plaintiff's comparative negligence, however, "may be decided in the context of a summary judgment motion where . . . the plaintiff moved for summary judgment dismissing a defendant's affirmative defense alleging comparative negligence" (*Dieubon v Moore*, 229 AD3d 686, 687 [2d Dept 2024]). There can be more than one proximate cause of an accident (*Welch v Suffolk Coach, Inc.*, 162 AD3d 1097 [2d Dept 2018]). The issue of proximate cause "may be decided as a matter of law where only one conclusion may be drawn from the facts" (*Raldiris v Enlarged City Sch. Dist. of Middletown*, 179 AD3d 1111, 1114 [2d Dept 2020], quoting *Faust v Gerde*, 150 AD3d 1204, 1204 [2d Dept 2017]).

A motion for summary judgment should not be granted "where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Gutkina v Max Media & Art, LLC*, 227 AD3d 961, 962 [2d Dept 2024], quoting *Abdenbi v Walgreen Co.*, 197 AD3d 1140 [2d Dept 2016]). For it is not the function of the court, on a motion for summary judgment, to resolve matters of credibility (*Butbul v City of New York*, 147 AD3d 897, 899 [2d Dept 2017]).

Vehicle and Traffic Law §1128(a) provides that on a roadway laned for traffic, "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety" (see also, *Merola v Beaird*, 185 AD3d 679, 680 [2d Dept 2020]). "A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law" (*Lopresti v Estate of Galante*, 221 AD3d 798, 799 [2d Dept 2023] quoting *Vainer v DiSalvo*, 79 AD3d 1023, 1024 [2d Dept 2010]).

A properly certified police accident report is admissible where "the report is made based upon the officer's personal observations and while carrying out police duties" (*Yassin v Blackman*, 188 AD3d 62, 65 [2d Dept 2020], quoting *Memenza v Cole*, 131 AD3d 1020 [2d Dept 2015]). "Facts stated in a police report that are hearsay are not admissible unless they constitute an exception to the hearsay rule" (*Siemucha v Garrison*, 111 AD3d 1398, 1401 [2d Dept 2013]).

Here, plaintiff has failed to establish entitlement to summary judgment as a matter of law. According to the parties' respective deposition transcripts, at the time of the accident, plaintiff says the parties were traveling east and defendant says the parties were traveling west, on Northern Boulevard. These claims, at the very least, raise issues of credibility and it is not the function of the court, on a motion for summary judgment, to resolve matters of credibility (*Butbul v City of New York*, 147 AD3d at 899). Notwithstanding the claims of speeding, there is no evidence before the Court as to the speed limit on this section of roadway. Moreover, plaintiff's reliance on the Amended Police Accident Report is misplaced as there is no indication that the police officer witnessed the accident or that the information in the report came from either party. As such, the information contained in the Report is inadmissible hearsay (*see, Yassin v Blackman*, 188 AD3d at 65). Under these contradictory facts, there are triable issues of as to the location and happening of the accident, and who was at fault. Thus, the motion is denied without regard to the opposition (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853).


In view of the foregoing, it is

ORDERED, plaintiff's motion for summary judgment on the issue of liability in her favor and for the dismissal of defendant's affirmative defenses based upon theories of contributory negligence, is denied; and it is

ORDERED, that any further relief requested is denied.

This constitutes the Order of the Court.

Dated: 12/04/2024

  
Leonard Livote, J.S.C.

