

**Siverne v Yijiang Wang**

2025 NY Slip Op 32198(U)

June 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 525569/2024

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 9<sup>th</sup> day of June 2025

PRESENT: HON. ANNE J. SWERN, J.S.C.

ELIEN SIVERNE,

*Plaintiff(s),*

*-against-*

YIJIANG WANG,

*Defendant(s).*

**DECISION & ORDER**

Index No.: 525569/2024

Calendar No.: 41

Motion Seq.: 001

Return Date: 4/10/2025

*Recitation of the following papers as required by CPLR 2219(a):*

**Papers  
Numbered**

- Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 7-11).....1, 2
- Affirmation and Exhibits in Opposition (NYSCEF 13-14) .....3
- Reply Affirmation (NYSCEF 15) .....4

*Upon the foregoing papers and after oral argument, the decision and order of the Court*

*is as follows:*

This is an action for personal injuries arising out of a motor vehicle accident on 2/17/2024. Plaintiff has moved for summary judgment against defendant on the issue of liability and dismissing defendant’s affirmative defenses relating thereto. In support of the motion, plaintiff submits an affidavit that the accident occurred when defendant “pulled out of a driveway” striking the passenger’s side of his vehicle in violation of Vehicle and Traffic Law § 1143.

Defendant did not submit an affidavit in opposition to the motion. Instead, it is argued that summary judgment is premature before depositions have been conducted. Defendant further argues that “[W]e have no knowledge of whether plaintiff or defendant honked the horn as they

were either approaching and/or exiting the driveway. For this reason alone, it is necessary that the deposition of all parties go forward as the parties likely have information, which is unknown to this defendant, and cannot otherwise be learned without a deposition” (NYSCEF 13, ¶¶6-7). Moreover, it is prejudicial to defendant to grant the motion based on a self-serving affidavit and defendant should be afforded the opportunity to inquire as to plaintiff’s comparative negligence in failing to “see that which there is to be seen” since there can be more than one proximate cause of an accident (NYSCEF, ¶¶6-7, 14-15).

When deciding a summary judgment motion, the Court’s role is solely to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court views the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]). The Court must still review a motion for summary judgment to ascertain whether the movant has met their burden of proof even if defendant fails to come forward and oppose the motion (see generally *Ramos v City of New York*, 61 AD3d 51, 57 [1<sup>st</sup> Dept 2009]).

A violation of the Vehicle and Traffic Law constitutes negligence per se (*Siezeme v Levy*, 208 AD3d 809, 810 (2<sup>nd</sup> Dept 2022)). However, a party with the right of way may be held responsible for the accident if he or she did not use reasonable care to avoid the accident even

though proceeding with the right-of-way (*Jeong Sook Lee-Son v Doe*, 170 AD3d 973, 975 [2d Dept. 2019]).

While plaintiff established a *prima facie* entitlement to summary judgment on the issue of defendant's negligence, he failed to do so concerning comparative negligence (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Jeong Sook Lee-Son v Doe*, 170 AD3d 975), even though defendant did not submit an affidavit opposing the motion (*Ramos v City of New York*, 61 AD3d 57). Construing the facts in a light most favorable to defendant (*Negri v Shop & Stop, Inc.*, 65 NY2d 626), plaintiff's affidavit is vague as to the point of contact on the passenger side of plaintiff's vehicle and does not establish as a matter of law that plaintiff could not use reasonable care to avoid the collision (*Jeong Sook Lee-Son v Doe*, *supra*). This question must be answered by a jury (*id.*).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

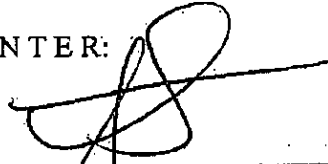
ORDERED that plaintiff's motion for an order pursuant to CPLR § 3212 granting summary judgment in plaintiff's favor on the issue of liability and defendant's negligence is granted, and it is further

ORDERED that plaintiff's motion for an order pursuant to CPLR § 3212 dismissing defendant's affirmative defenses on the issue of liability is denied, and it is further

ORDERED that this action shall proceed to trial on the issues of defendant's affirmative defenses and plaintiff's damages,

This constitutes the decision and order of the Court.

ENTER:



**Hon. Anne J. Swern, J.S.C.**

**Dated: 6/9/2025**

For Clerks use only:
MG <u>to ext</u>
MD _____
Motion seq. # <u>1</u>

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