

Harris v Rui Qiang Peng

2025 NY Slip Op 33876(U)

October 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 527644/2024

Judge: Wavny Toussaint

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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9th day of October, 2025.

P R E S E N T:

HON. WAVNY TOUSSAINT,

Justice.

-----X

SHEALA K. HARRIS,

Index No.: 527644/2024

Plaintiff,

DECISION AND ORDER

- against -

RUI QIANG PENG,

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/ and Affidavits (Affirmations) Annexed	<u>12-18</u>
Cross Motion and Affidavits (Affirmation) Annexed	<u> </u>
Answers/Opposing Affidavits (Affirmations)	<u>26</u>
Reply Affidavits (Affirmations)	<u>29</u>
Affidavit (Affirmation)	<u> </u>
Other Papers	<u> </u>

Upon the foregoing papers, plaintiff Sheala Harris (“Harris”), moves (Seq .01) for an order, pursuant to CPLR § 3212 granting summary judgment against defendant Rui Peng (“Peng”), on the issue of liability and pursuant to CPLR § 3211(b) dismissing defendant’s comparative negligence and proximate cause defenses. Defendant opposes the motion.

BACKGROUND

This action arises from a motor-vehicle accident that occurred on June 7, 2024, at or near the intersection of Atlantic Avenue and Georgia Avenue in Brooklyn, NY. The accident involved a vehicle owned and operated by defendant and a vehicle operated by plaintiff. Plaintiff alleges that she sustained severe injuries, as well as economic and property damages, as a result of the accident.

PARTIES CONTENTIONS

Plaintiff contends that she has submitted sufficient evidentiary proof to establish a prima facie case of negligence against the defendant. In support of her motion, plaintiff relies on a certified police report and Google Street View images of the intersection, including signage indicating “No Left Turn” and “No U-Turn,” to substantiate her claim that defendant violated traffic regulations at the time of the accident.

In opposition, defendant argues that material issues of fact exist regarding the circumstances leading to the collision. In his affirmation, defendant asserts that he was changing lanes—not making a turn—when the accident occurred. He further contends that plaintiff has failed to eliminate all triable issues of fact concerning her own potential contributory negligence. As such, he argues that plaintiff has not met her prima facie burden of demonstrating that she exercised reasonable care to avoid the collision. Defendant also asserts that the relative positions of the vehicles at the time of impact, along with the parties’ conflicting accounts, raise factual questions as to whether plaintiff had the last clear chance to avoid the accident. Finally, defendant maintains that, even if the Court finds in plaintiff’s favor on the issue of liability, summary judgment on the issue of

comparative negligence is unwarranted. In reply, plaintiff argues that defendant previously admitted to attempting a turn from the middle lane and is now contradicting that admission in an effort to manufacture a triable issue of fact.

DISCUSSION

It is well established that 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 (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once such a showing has been made, “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 . . .” (*Id.*). It is not the function of the Court to resolve issues of credibility or make findings of fact on a motion for summary judgment, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Goldin Real Estate, LLC v Shukla*, 227 AD3d 674, 676 [2d Dept 2024]) quoting *Vega v Restani Const. Corp.*, 18 NY3d 499 [2012]).

It is also well settled that the “operator of an oncoming vehicle with the right-of-way is entitled to assume that the opposing operator will yield in compliance with the Vehicle and Traffic Law” (*Aponte v Vani*, 155 AD3d 929, 930 [2d Dept 2017]). However, “the driver traveling with the right-of-way may nevertheless be found to have contributed to the happening of the accident if [the driver] did not use reasonable care to avoid the accident” (*Id.*)

Applying these principles, the Court finds that the parties have presented conflicting accounts of the circumstances leading to the accident. The affidavits submitted by both

parties, along with the disputed police accident report, contain contested facts that raise triable issues of fact as to how the accident occurred. In light of these circumstances, summary judgment is not appropriate at this time, and further discovery is warranted.

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment (Seq. 01) is denied.

Discovery shall continue on the issue of liability and damages.

This constitutes the decision and order of the Court.

For Clerks use only

MG ___

MD ___

Motion Seq.

E N T E R



J.S.C.

Hon. Wavny Toussaint
J.S.C.