

Householder v Atlantic Dist. of the Lutheran Church-Mo. Synod
2025 NY Slip Op 35483(U)
February 26, 2025
Supreme Court, Nassau County
Docket Number: Index No. 607475/2023
Judge: Lisa A. Cairo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PRESENT: HON. LISA A. CAIRO, J.S.C.

-----X TRIAL/IAS PART 22
MICHELE F. HOUSEHOLDER,

Plaintiffs,

DECISION AND ORDER
ON MOTION

-against-

INDEX No. 607475/2023

THE ATLANTIC DISTRICT OF THE
LUTHERAN CHURCH-MISSOURI
SYNOD, THE LUTHERAN CHURCH-
MISSOURI SYNOD, PETER ANDREW
LABENBERG, AND PAUL M. CHESHIRE,

Motion Seq. No. 2

Defendants.

-----X
PAUL M. CHESHIRE,

Plaintiff,

Index No. 608986/2023

PETER ANDREW LABENBERG, AND
THE ATLANTIC DISTRICT OF THE
LUTHERAN CHURCH-MISSOURI SYNOD,

Defendants.

-----X
The following papers were read on this motion

DOCS NUMBERED

Notice of Motion, Affidavits, Affirmations, Exhibits, Memos.....	55-66
Opposition Papers.....	71-74, 75
Reply Papers.....	76

Paul M. Cheshire moves by notice of motion for an order granting summary judgment in his favor on the issue of liability and dismissing all claims and cross-claims as against him. Plaintiff Michele F. Householder and Defendant Andrew Labenberg oppose the motion.

BACKGROUND

This action arises out of a motor vehicle accident that occurred on September 23, 2022 at approximately 5:50 p.m. on Loring Road in the County of Nassau, New York. Michele Householder was a passenger in a motor vehicle owned and operated by Paul Cheshire when that vehicle was involved in a collision with a vehicle owned by the Atlantic District of the Lutheran Church-Missouri Synod and operated by Andrew Labenberg.

By order dated June 10, 2024, the court granted Plaintiff Michele F. Householder's motion for summary judgment only to the extent of determining her freedom from negligence as an innocent passenger. However, the court denied summary judgment on the issue of liability as against both driver defendants on the grounds that material issues of fact remained regarding the happening of the accident.

DISCUSSION

As previously explained, "[t]he 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]). Upon a prima facie showing, "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*, 68 NY2d at 324). "The facts must be viewed in the light most favorable to the non-moving party [but] bald, conclusory assertions or speculation and a shadowy semblance of an issue are insufficient to defeat summary judgment." (*Stonehill Capital Management, LLC v. Bank of the West*, 28 NY3d 439 [2016] [internal quotations omitted]; see also *Fairlane Financial Corp. v. Longspaugh*, 144 AD3d 858 [2d Dept 2016]; *Phillip v D&D Carting Co., Inc.*, 136 AD3d 18[2d Dept 2015]).

A driver who has the right-of-way is entitled to anticipate that the other driver will obey traffic laws which require him or her to yield (see Vehicle and Traffic Law § 1141; *Kann v. Maggies Paratransit Corp.*, 63 A.D.3d 792, 793, 882 N.Y.S.2d 129; *Moreno v. Gomez*, 58 A.D.3d 611, 612, 872 N.Y.S.2d 143; *Palomo v. Pozzi*, 57 A.D.3d 498, 498, 869 N.Y.S.2d 153; *Gabler v. Marly Bldg. Supply Corp.*, 27 A.D.3d 519, 520, 813 N.Y.S.2d 120; *Moreback v. Mesquita*, 17 A.D.3d 420, 421, 793 N.Y.S.2d 148). Moreover, a driver is negligent if he or she failed to see that which, through the proper use of senses, should have been seen (see *Laino v. Lucchese*, 35 A.D.3d 672, 672, 827 N.Y.S.2d 249; *Berner v. Koegel*, 31 A.D.3d 591, 592, 819 N.Y.S.2d 89; *Bongiovi v. Hoffman*, 18 A.D.3d 686, 687, 795 N.Y.S.2d 354; *Bolta v. Lohan*, 242 A.D.2d 356, 661 N.Y.S.2d 286). At the same time, a driver who has the right-of-way has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection (see *Cox v. Nunez*, 23 A.D.3d 427, 427, 805 N.Y.S.2d 604). "There can be more than one proximate cause of an accident" (*id.*), and the issue of comparative negligence is generally a question for the jury to decide (see *Sokolovsky v. Mucip, Inc.*, 32 A.D.3d 1011, 821 N.Y.S.2d 463; see *Rios v. Johnson V.B.C.*, 17 A.D.3d 654, 656, 795 N.Y.S.2d 62). (*Wilson v. Rosedom*, 82 AD3d 970, 970 [2d Dept 2011]).

In support of the instant motion, Defendant Cheshire submits the transcript of his deposition testimony as well as that of Labenberg and Householder.

At deposition, Cheshire stated that he was involved in a collision on September 23, 2022 at about 6pm at the corner of Loring Road and Chase Lane. His vehicle was traveling south on Loring Road. He intended to make a left turn onto Chase Lane as this is the route he takes home from work. There is no traffic control device on Loring Road. There is, however, a stop sign for traffic on Chase Lane. Prior to the collision he saw the adverse vehicle as he was about ten feet before the intersection. The Labenberg vehicle stopped at the stop sign on Chase Lane, with the blinker on indicating a left turn. Cheshire waited for passing traffic and then started to make a left turn when the Labenberg vehicle attempted to make a left turn out of Chase Lane and the front of the Labenberg vehicle collided with Cheshire's vehicle. Cheshire testified based upon his knowledge of the area that vehicles on Chase Lane would have to pull past the stop sign to see traffic coming on Loring Road.

Andrew Labenberg testified that he was driving on Chase Lane intending to get to the Southern State Parkway. He could see the intersection with Loring Road from a block away. There was sun glare coming into his windshield. He stopped his vehicle at the stop sign for up to two minutes trying to pull out due to traffic. He started to move his vehicle to make a left with his left turn signal on, his vehicle moved only about 18 inches prior to the accident. He saw something out of the corner of his eye and hit the brake hard. Prior to the accident, he saw the Cheshire vehicle "flying down" southbound on Loring Road and looked left again intending to pull out behind the Cheshire vehicle, which he believed to be continuing straight. He saw the Cheshire vehicle "coming down at a pretty good rate, looked back to the left to see if anything was coming from the left, and that's when [he] took [his] foot off the brake." Labenberg described the accident as a long scrape in that the Cheshire vehicle "came and sliced across the left front of [the Labenberg] car and just kept going." Cheshire made "a hard turn slicing in front of" Labenberg's vehicle. Labenberg testified that he did not believe the other vehicle was going to turn because it did not have a turn signal on and was traveling at a rapid rate of speed. Labenberg admitted that he did not keep the Cheshire vehicle under constant observation up until the time of the accident.

Michele Householder testified that as the Cheshire vehicle was heading down the road, it came to a stop to prepare to make a left turn when a vehicle that was coming up the block stopped, but didn't look both ways. As the Cheshire vehicle was turning, the adverse vehicle turned and hit the Cheshire side of the car. She testified that Cheshire illuminated the turn signal, which she could hear. She saw the Labenberg vehicle prior to the impact but does not know if Cheshire did and there was no time to warn him prior to the impact. The Cheshire vehicle was halfway through the turn at the time of the accident. She did not believe there was anything that Cheshire could have done to avoid the accident. She could not estimate either vehicles rate of speed.

When questioned about her allegations against Mr. Cheshire and whether he was negligent in attempting to make a left-hand turn when it was unsafe to do so, Householder stated that she couldn't answer that and later said "Yes, because he was the driver. But no, because I don't believe the accident was his fault."

On this record, Labenberg's testimony that the Cheshire vehicle failed to illuminate its turn signal and made a "hard slicing turn" in front of his vehicle is sufficient to raise questions of fact as to Cheshire's potential comparative negligence in the happening of the accident. Further still, Householder testified that she did not know if Cheshire was negligent in the happening of the accident and her counsel has taken the position that there are questions of fact concerning whether the "movant driver used reasonable care to avoid a collision." The court agrees and, accordingly, summary judgment in favor of Cheshire is not appropriate.

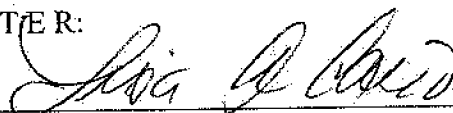
For these reasons, it is hereby

ORDERED, that the motion by Paul M. Cheshire for summary judgment is **denied**.

The foregoing constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, NY
February 26, 2025

ENTER:


HON. LISA A. CAIRO, J. S. C.

ENTERED

Mar 03 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE