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| <b>Franklin v Afridi</b>                                                                                                                                                                                                       |
| 2025 NY Slip Op 35505(U)                                                                                                                                                                                                       |
| February 10, 2025                                                                                                                                                                                                              |
| Supreme Court, Nassau County                                                                                                                                                                                                   |
| Docket Number: Index No. 613965/2023                                                                                                                                                                                           |
| Judge: Gary M. Carlton                                                                                                                                                                                                         |
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SUPREME COURT OF THE STATE OF NEW YORK  
NASSAU COUNTY

-----X  
SEAN FRANKLIN,

Sequence 001

Index No.: 613965/2023

Plaintiff,

Hon. GARY M. CARLTON

-against-

**DECISION AND ORDER**

ZAMAN K. AFRIDI and INTA-BORO ACRES, INC.,

Defendants  
-----X

The following papers read on this motion:

001

Notice of Motion/Supporting Exhibits.....X

Affirmation in Opposition/Supporting Exhibits .....X

Reply Affirmation/Supporting Exhibits .....X

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**FACTS**

This is a motor vehicle case where plaintiff moves for summary judgment.

On July 21, 2023, at approximately 9:35 p.m the subject accident occurred in front of 21 Southwoods Road, approximately 1000 feet south of Cold Spring Road, Town of Oyster Bay, County of Nassau.

Defendant's vehicle exited a private driveway and was making a left hand turn across plaintiff FRANKLIN's path of travel. Plaintiff testified that defendant's headlights were off at the time of the accident.

**ARGUMENTS**

Plaintiff's counsel argues that a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield, cannot be comparatively

negligent for failing to avoid a collision.

The defense argues that his left turn signal was activated and that the left hand turn was reasonably made.

Plaintiff's counsel in the Reply rightfully asks the Court to disregard the hearsay statements of defendant's passenger.

### **LAW**

The standards for review on a motion for summary judgment are well settled. "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 eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers", (Winegrad v. N.Y. Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

Plaintiff's counsel uses deposition transcripts to support the motion. See generally Franzese v. Tagner Factory Outlet Ctrs., Inc., 88 A.D.3d 763 (2d Dept. 2011).

Defense counsel does not challenge their accuracy. Thus, the transcripts qualified as admissible evidence, Boadu v. City of New York, 95 A.D.3d 918, 919 (2d Dept 2012), Baptiste v Ditmas Park, LLC, 171 AD3d 1001 (2d Dept 2019).

New York State Vehicle and Traffic Law § 1143 provides that the driver of a vehicle about to enter or cross a roadway from any place other than another

roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.

New York State Vehicle and Traffic Law § 1141 provides as follows:

The driver of a vehicle intending to turn to the left ... shall yield the right of way to any vehicle approaching from the opposite direction ... so close as to constitute an immediate hazard.

Defendant's vehicle at night exited a private driveway and was making a left hand turn across plaintiff's path of travel, causing a collision to occur.

The plaintiff has made a prima facie cases for summary judgment.

Once Plaintiff has made a prima facie showing, the burden shifts to the defendants to come forward to overcome plaintiff's submissions by demonstrating triable issues of fact.

Defense counsel argues that Plaintiff's motorcycle was traveling at a high rate of speed, but cites no evidentiary source. Affirmations of defense counsel without knowledge are insufficient, In re Estate of O'Hara, 85 A.D.2d 669, 671 (2d Dept. 1981).

The deposition testimony of defendant AFRIDI was that the contact happened in the plaintiff's lane of traffic to the left front of defendant's vehicle (p.66 line 15-23).

Further defense counsel does not address that defendant AFRIDI made an

improper left hand turn into plaintiff FRANKLIN's lane of travel in violation of Vehicle and Traffic Law Sections 1141 and 1143. Defendant negligently entered the roadway making a left turn from a private driveway without yielding the right-of-way to a motorcycle ,see Estate of Cook v Gomez, 138 A.D.3d 675, 676 (2d Dept. 2016).

The Court finds that although a driver with a right-of-way has a duty to use reasonable care to avoid a collision, a driver with the right- of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision, see Adobea v. Junel, 114 A.D.3d 818 (2d Dept. 2014).

Plaintiff does not have to establish the absence of his own comparative negligence, Rodriguez v. City of New York, 31 N.Y.3d 312 (2018).

Accordingly, it is hereby

ORDERED, that the motion for summary judgment is granted, no triable issue of fact exists in this matter on the issue of liability

Dated: February 10, 2025

  
GARY M. CARLTON  
SUPREME COURT JUSTICE

**ENTERED**

**Feb 20 2025**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE