

Haas-Gatell v Bhinder
2025 NY Slip Op 35605(U)
January 9, 2025
Supreme Court, Nassau County
Docket Number: Index No. 605627/2023
Judge: Christopher T. McGrath
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**SUPREME COURT OF THE STATE OF NEWYORK
COUNTY OF NASSAU
PRESENT: HON. CHRISTOPHER T. McGRATH**

-----X
LAURAHAAAS- GATELL,

Plaintiff,

-against-

NARINDERS. BHINDER,

Defendant.
-----X

**TRIAL IAS PART: 25
INDEX NO.: 605627/2023
MOTION SEQ. NO:001
MOTION SUBMITTED:
11/9/2025**

DECISION & ORDER

The e-filed documents for Motion Sequence 001, listed by NYSCEF document numbers “18,” through “34,” have been read and considered on this motion.

Plaintiff moves for an Order granting the following relief: 1) summary judgment, pursuant to CPLR §3212, on the issue of liability; 2) striking Defendant’s affirmative defenses pertaining to comparative negligence; and 3) scheduling a trial on the issue of damages only.

This is an action arising from a motor vehicle accident that occurred on September 22, 2022, at approximately 3:15pm, wherein the front of Defendant’s vehicle struck the driver’s side of Plaintiff’s vehicle. Plaintiff testified that she was on her way home from picking up her granddaughter from elementary school when the accident occurred. She further testified, that from the elementary school, she made a right turn onto Broadway into the right lane of the two lanes, traveling north towards home, where she remained until Defendant struck her vehicle. (see, Exhibit G, Deposition Testimony of Plaintiff, Notice of Motion). It is undisputed that prior to the accident, Defendant was proceeding on Syracuse Avenue approaching the stop sign at its intersection with Broadway. It is also undisputed that it was Defendant’s intention to make a left onto Broadway from the stop sign on Syracuse Avenue. Defendant testified “I tr[ied] to make a left turn and its too much traffic...so, when I make a turn and I just hit litte bit of other cars...” (see Exhibit H, Deposition Testimony of Defendant, Notice of Motion).

In further support of the instant application, the Plaintiff annexes a signed statement from a witness to the accident, Sharon Zimmerman, stating in pertinent part that she was: ‘in the left, northbound lane of N. Broadway, stopped behind a landscaping truck who was waiting to make a

left on N. Syracuse Ave. Instead if turning into the closest left lane of N. Broadway, it turned widely into the right lane hitting into a white suburban driving in the right northbound lane...”. (see Exhibit G, Witness Statement, Notice of Motion)

It is undisputed that on Broadway at its intersection with Syracuse Avenue, there is no traffic control device for vehicles traveling on Broadway. It is also undisputed that there is a stop sign on Syracuse Avenue controlling vehicles attempting to cross over or turn onto Broadway. Plaintiff maintains that Plaintiff’s vehicle was proceeding on Broadway with no traffic control device in her direction when she was struck by the Defendant’s motor vehicle which was making a left turn across multiple lanes of traffic from a stop sign on Sycamore Avenue. Plaintiff also maintains that pursuant to Defendant’s testimony, the Defendant driver saw Plaintiff’s vehicle moving slowly on Broadway prior to the accident and still attempted a turn across three lanes of traffic into the far-right lane of Broadway.

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 N.Y.2d 320 [1986]). Once the movant has demonstrated a *prima facie* showing of entitlement to judgement, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of a fact which require a trial of the action (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). “ ‘A defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident’ ” (*Shuofang Yang v Sanacore*, 202 AD3d 1120, 1121 [2022], *quoting Boulos v Lerner-Harrington*, 124 AD3d 709, 709 [2015]; *see Enriquez v Joseph*, 169 AD3d 1008, 1008-1009 [2019]).

“A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law” (*Vainer v DiSalvo*, 79 AD3d 1023, 1024 [2010]). Pursuant to Vehicle and Traffic Law § 1141, “[t]he driver of a vehicle intending to turn to the left within an intersection . . . shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard” (*see Brodney v Picinic*, 172 AD3d 673, 674 [2019]; *Ming-Fai Jon v Wager*, 165 AD3d 1253, 1253-1254 [2018]). “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” (*Attl v Spetler*, 137 AD3d 1176, 1176 [2016]; *Shashaty v Gavitt*, 158 AD3d 830, 831 [2018]). “ ‘Although a driver with a right-of-way also 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’ ” (*Choo v Virginia Transp. Corp.*, 204 AD3d 743, 744 [2022], quoting *Yelder v Walters*, 64 AD3d 762, 764 [2009]; *Shashaty v Gavitt*, 158 AD3d at 831). (See *Kishun v. Roman*, 221 AD3d 795 [2d Dept 2023]).

The Second Department, Appellate Division recently held in *Zhu v Shrestha*, 229 AD3d 844, 845 [2d Dept 2024] as follows: “To be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing ... the absence of his or her own comparative fault” (*Rodriguez v. City of New York*, 31 N.Y.3d at 324–325, 76 N.Y.S.3d 898, 101 N.E.3d 366). However, where, as here, the plaintiff’s motion for summary judgment also seeks to strike the defendant’s affirmative defense of comparative fault, ‘the issue of a plaintiff’s comparative negligence may be decided in the context of [such] a summary judgment motion’ (*Sapienza v. Harrison*, 191 A.D.3d 1028, 1029, 142 N.Y.S.3d 584).” (*Id.*)

In the case at bar, Plaintiff has set forth *prima facie* entitlement to summary judgment. Defendant failed to offer a non-negligent explanation for the accident. Rather Defendant asserts that an issue of fact exists because the Plaintiff testified at her deposition that on the date and time of the accident the weather was “clear, dry” and the Defendant testified that the weather was “rainy” and that the roadway was “slippery.” Allegations of a wet roadway or that the weather was “rainy” is insufficient to rebut the inference of negligence arising from Defendant’s failure to yield the right of way to Plaintiff’s vehicle. (See *Morgan v Flippen*, 173 AD3d 735, 736 [2d Dept 2019]).

Additionally, Defendant contends that Plaintiff’s motion should be denied because Plaintiff testified that she saw the Defendant immediately before the accident. Thus, Defendant maintains that a question of fact exists as to whether Plaintiff acted as a reasonable and prudent driver under the circumstances and saw what there was to be seen. ‘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’ (*Jeong Sook Lee–Son v. Doe*, 170 A.D.3d 973, 974, 96 N.Y.S.3d 302 [2d Dept 2019] [internal quotation marks omitted]).” (*Zhu v Shrestha*, 229

AD3d 844, 845 [2d Dept 2024])). Based upon this record, Plaintiff cannot be held comparatively liable for the happening of this accident.

Accordingly, it is hereby

ORDERED, that Plaintiff's motion pursuant to CPLR§ 3212 granting Plaintiff summary judgment on the issue of liability is granted; and it is further

ORDERED, that Defendant's affirmative defenses with regard to comparative negligence are hereby stricken. This matter shall proceed to trial on the issue of damages.

Any relief not specifically granted is hereby **denied**.

This constitutes the decision and order of this court.

Date: January 9, 2025

Mineola, New York



HON. CHRISTOPHER T. McGRATH

ENTERED

Jan 21 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE