

|                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Blair v Hsiang Ku Chen</b>                                                                                                                                                                                                  |
| 2025 NY Slip Op 35618(U)                                                                                                                                                                                                       |
| March 6, 2025                                                                                                                                                                                                                  |
| Supreme Court, Nassau County                                                                                                                                                                                                   |
| Docket Number: Index No. 611278/2024                                                                                                                                                                                           |
| Judge: Gregg Roth                                                                                                                                                                                                              |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

## SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable Gregg Roth

Justice

\_\_\_\_\_  
XTRIAL/IAS, PART 29  
NASSAU COUNTY

NICOLE BLAIR,

Plaintiff,

Index No.: 611278/2024

-against-

HSIANG KU CHEN,

Motion Seq. No.: 001

Defendant.

Motion Submitted: 1/15/22

\_\_\_\_\_  
X

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X  
 Affirmation in Opposition/Supporting Exhibit.....X  
 Reply Affirmation.....X

Plaintiff, Nicole Blair (Blair), moves this Court for an order pursuant to CPLR §3212, granting Plaintiff summary judgment against Defendant, Hsiang Ku Chen (Chen) on the issue of liability, and for an order pursuant to CPLR 3211(b) striking Defendants' fourth affirmative defense alleging culpable conduct, fifth affirmative defense alleging failure to wear a seat belt and eighth affirmative defense alleging failure to state a cause of action. Defendant opposes the motion.

This action involves an accident between two motor vehicles which occurred on July 1, 2023 at or near the intersection of Rockland Street and School Street, Town of North Hempstead, County of Nassau. Blair commenced this action by filing a summons

and complaint on June 27, 2024. Issue was joined by filing of an answer on August 23, 2024.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a *prima facie* showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v New York University Medical Center*, 64 NY2d 851 [1985]). Once this showing has been made, however, 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 (*see Zuckerman v City of New York*, 49 NY2d 557 [1980], *supra*). The primary purpose of a summary judgment motion is issue finding not issue determination, *Garcia v J.C. Duggan, Inc.*, 180 AD2d 570 (1st Dept 1992), and it should only be granted when there are no triable issues of fact (*see Andre v Pomeroy*, 35 N2d 361 [1974]).

“ ‘There can be more than one proximate cause of an accident, and [g]enerally, it is for the trier of fact to determine the issue of proximate cause’ ” (*Saviano v TT of Massapequa, Inc.*, 223 AD3d 851, 852 [2d Dept 2024], quoting *Richardson v Cablevision Sys. Corp.*, 173 AD3d 1083, 1084 [2d Dept 2019])[citations and internal quotation marks

omitted]). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party (*see Stukas v Streiter*, 83 AD3d 18, 23 [2d Dept 2011]).

“Pursuant to Vehicle and Traffic Law § 1142(a), a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard” (*Cruz v. DiSalvo*, 188 AD3d 986, 987 [2d Dept 2020]; *see Roderick v Golden*, 230 AD3d 816, 817 [2d Dept 2024]; *Shuofang Yang v Sanacore*, 202 AD3d 1120, 1121 [2d Dept 2020]). “The question of whether [the driver] stopped at the stop sign is not dispositive [where] the evidence establish[es] that he [or she] failed to yield even if he [or she] did stop” (*Belle–Fleur v Desriviere*, 178 AD3d 993, 995 [2d Dept 2019]; *see Zhu v Shrestha*, 229 AD3d 844, 845 [2d Dept 2024]). “As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law” (*Brewster v Riseboro Community Partnership, Inc.*, 234 AD3d 810 [2d Dept 2025]; quoting *Shvydkaya v. Park Ave. BMW Acura Motor Corp.*, 172 AD3d 1130, 1131 [2d Dept 2019]). “Even though the driver with the right-of-way is entitled to assume that other drivers will obey the traffic laws requiring them to yield, he or she still has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection” (*Park v Giunta*, 217 AD3d 661, 662 [2d Dept 2023]; *see Valdez v MTA Bus Co.*, 210 AD3d 821, 821–822 [2d Dept 2022]).

In support of the motion, Blair submits her affidavit, the pleadings, a certified police report, and photographs of the subject intersection. In her affidavit, Blair states that

she was driving her vehicle eastbound on Rockland Street, wearing her seatbelt, traveling straight towards the intersection with School Street. There was a stop sign and stop line controlling her direction of travel. She brought her vehicle to a full and gradual stop at the stop sign and stop line. She then looked for vehicles traveling on Rockland Street and School Street, observed that traffic was clear, there were no vehicles, and she proceeded straight. As she was proceeding straight, Chen's vehicle, which was proceeding northbound on School Street, failed to yield the right of way, disregarded and failed to stop at a posted stop sign and stop line, and suddenly and abruptly attempted to make a left turn onto Rockland Street, directly in front of Blair's vehicle, causing the collision. Blair states further that she had no warning and no opportunity to avoid the collision.

Plaintiff established her prima facie entitlement to judgment as a matter of law as to Defendant's liability through her affidavit, which demonstrated that Defendant was negligent in entering the intersection without yielding the right-of-way to plaintiff and that such negligence was a proximate cause of the accident (*see* Vehicle and Traffic Law § 1142[a]; *Policart v Wheels LT*, 221 AD3d 920, 922 [2d Dept 2023]). However, the evidence submitted by Plaintiff failed to establish her freedom from comparative fault or that Defendant's violation of that statute was the sole proximate cause of the accident (*see Roderick v Golden*, 230 AD3d 816, 817 [2d Dept 2024]; *Mu-Jin Chen v. Cardenia*, 138 AD3d 1126, 1128 [2d Dept 2016]).

In opposition to the motion, Defendant submitted her affidavit, in which she states that she was driving her vehicle north on School Street as it reached a "T" intersection with Rockland Street. Rockland Street runs east and west. The "T" intersection is governed by stop signs. Defendant approached the intersection and stopped, waited for a

vehicle to pass from her right, then looked right and left. With no cars being at either of the other stop signs, Defendant began to make a left turn. While doing so, Plaintiff's vehicle approached the stop sign to her left, but did not stop and "ran" the stop sign, and caused the collision.

The Court finds that Defendant's affidavit raises triable issues of fact regarding the cause of the subject accident and of each party's negligence and liability. Insofar as the record presents issues of fact and credibility, and competing inferences may be drawn from the evidence presented, summary judgment is inappropriate (*see Parietti-Fogarty v Fogarty*, 141 AD3d 512 [2d Dept 2016]; *Baker v D.J. Stapleton, Inc.*, 43 AD3d 839 [2d Dept 2007]). To believe one party's version of events over another would require a credibility determination which would be inappropriate on a motion for summary judgment (*see Bank of New York Mellon v. Gordon*, 171 AD3d 197 [2d Dept 2019]). Based on the foregoing, Plaintiff's motion for summary judgment on the issue of liability and striking Defendants' fourth affirmative defense alleging culpable conduct will be denied.

The Court notes that the police accident report submitted by Plaintiff does not contain any entry that "amount[s] to a party admission or an admission against interest" of the Defendant (*Wasilewska v Long Is. Compost Corp.*, 234 AD3d 802 [2d Dept 2025]), or a diagram of the accident, or the precise location of the collision within the subject intersection.

Finally, the Court finds that Defendant has failed to raise a triable issue of fact regarding plaintiff's entitlement to dismissal of the fifth affirmative defense alleging

failure to wear a seat belt and eighth affirmative defense alleging failure to state a cause of action.

Accordingly, it is hereby

**ORDERED**, that Plaintiff's motion is GRANTED in part and DENIED in part as follows:

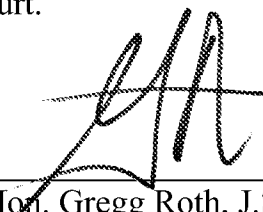
That branch of Plaintiff's motion which was for summary judgment on the issue of liability and to dismiss Defendant's fourth affirmative defense alleging culpable conduct on the part of the Plaintiff is DENIED;

That branch of Plaintiff's motion which was to dismiss Defendant's fifth affirmative defense alleging failure to wear a seat belt and eighth affirmative defense alleging failure to state a cause of action is GRANTED, and those affirmative defenses are DISMISSED.

The Court has considered the parties' remaining arguments and finds them to be either moot or without merit.

This constitutes the Decision and Order of the Court.

Dated: March 6, 2025  
Mineola, N.Y.

  
\_\_\_\_\_  
Hon. Gregg Roth, J.S.C.**ENTERED****Mar 10 2025**NASSAU COUNTY  
COUNTY CLERK'S OFFICE