

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN  
JUSTICE

-----X  
JOSE A. MEJIA,

Plaintiff,

-against-

DEBORAH KENNEDY and ASHLEY ROSE FILIPPE,

Defendants.

-----X  
DEBORAH KENNEDY,

Plaintiff,

-against-

ASHLEY R. FILIPPI and JOSE A. MEJIA,

Defendants.

-----X

TRIAL/IAS PART 17

Motion Seq. 1, 3  
Motion Date 4.13.12  
Submit Date 4.13.12

ACTION NO. 1

INDEX # 1828/11

ACTION NO. 2

Index # 13027/11

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The following papers were read on this motion:

Papers Numbered

Notice of Motion, Cross Motion Affidavits (Affirmations), Exhibits Annexed..... 1,2  
Answering Affidavit ..... 3,4,5  
Reply Affidavit..... 6  
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Plaintiff, Jose A. Mejia, moves for an order, pursuant to CPLR § 3212, granting him summary judgment against defendants Deborah Kennedy and Ashley Rose Filippi on the issue of liability .

Third-party plaintiff, Deborah Kennedy, moves for an order, pursuant to CPLR § 3212, granting her summary judgment dismissal of third-party defendants' claims against her.

The action involves a car accident that occurred on September 10, 2010 at approximately 8:20 p.m., at the intersection of Jericho Turnpike and Brush Hollow Road, Nassau County, New York.

The majority of the facts in this case are not in dispute. The plaintiff (Mejia) had been stopped in his vehicle at a red light in the left turning lane of Jericho Turnpike, facing west, while the defendants (Kennedy and Filippi) approached the intersection in Kennedy's vehicle heading east, also with a red light. Filippi, who had a learner's permit, was driving the vehicle, which was owned by Kennedy. When the left turn arrows became green, Mejia began to turn onto Brush Hollow Road. At the same time, Filippi, who was driving Kennedy's vehicle, drove through the red light in forward moving traffic and collided with Mejia's vehicle before Mejia had finished his left turn.

In her oral examination before trial, Filippi admitted that she drove through the red light at the intersection where the accident occurred (Filippi Transcript at 26). Filippi claimed that she came to a complete stop at the red light (*Id.* at 20) and became distracted by Kennedy playing music and dancing in the passenger seat (*Id.* at 22). Filippi stated that when she was stopped at the light, she was above the line and could not see. She saw the left turn signal turn green, and since she could not see the light, she thought it turned green with the left turn signal. However,

in reality, the light was red at that time (*Id.* at 26).

In his oral examination before trial, Mejia stated that he came to a stop in the left turning lane while the turn arrow was red (Mejia Transcript at 19). When Mejia first saw the turning light become green, he began his turn onto Brush Hollow Road and looked across Jericho Turnpike for oncoming traffic (*Id.* at 89-90). Mejia saw the defendants' vehicle approaching (*Id.* at 84). It did not slow down before colliding with the front of the passenger side of Mejia's vehicle (*Id.* at 22).

Mejia moves for summary judgment contending that Filippi violated Vehicle and Traffic Law § 1111(d)(1) by running a red light, thus Filippi is negligent as a matter of law. Filippi opposes, arguing that a question of fact exists as to whether Mejia may have been a contributing factor to causing the accident by failing to anticipate or avoid the collision.

The rule in motions for summary judgment has been stated by the Appellate Division, Second Dept., in *Stewart Title Insurance Company v. Equitable Land Services, Inc.*, 207 AD2d 880, 881 (2<sup>nd</sup> Dept. 1994):

“It is well established that a party moving for summary judgment must make a *prima facie* showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853; *Zuckerman v. City of New York*, 49 NY2d 557, 562). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank v. McAuliffe*, 97 AD2d 607 [3<sup>rd</sup> Dept. 1983]), but once a *prima facie* 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 material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v. City of New York supra*, at p. 562).”

In deciding a summary judgment motion, the evidence must be scrutinized carefully in the light most favorable to the non moving party.

Vehicle and Traffic Law § 1111(d)(1) provides that cars at red traffic lights must remain standing until an indication to proceed is shown. Proceeding into an intersection without yielding the right-of-way is a violation of Vehicle and Traffic Law and constitutes negligence as a matter of law (*Perez v. Paljevic*, 31 AD3d 520 [2<sup>nd</sup> Dept. 2006]). The driver with the right-of-way is entitled to anticipate that other drivers would obey traffic laws that require them to yield (*Id.*, *Agin v. Rehfeldt*, 284 AD2d 352 [2<sup>nd</sup> Dept. 2001]).

The plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability (*Deleg v. Vinci*, 82 AD3d 1146 [2<sup>nd</sup> Dept. 2011]). The evidence submitted by the plaintiff demonstrated that the vehicle driven by the defendant Filippi and owned by the defendant Kennedy struck a vehicle in which the plaintiff Mejia was driving. The accident occurred when Filippi failed to stop at a red light signal and proceeded through an intersection in violation of VTL § 1111(d)(1), striking the plaintiff's vehicle.

In response, the defendant failed to raise a triable issue of fact as to whether Mejia was in any way at fault in the happening of the accident (*Shapiro v. Munoz*, 28 AD3d 638 [2<sup>nd</sup> Dept. 2006]). The record does not support Filippi's contention that a triable issue of fact exists as to whether the plaintiff was comparatively negligent in the operation of his vehicle because he failed to avoid the collision (*Berner v. Koegel*, 31 AD3d 591 [2<sup>nd</sup> Dept. 2006]). As the plaintiff had the right-of-way, he was entitled to anticipate that the defendant would obey the traffic laws (*Id.*).

The plaintiff's motion for summary judgment on the issue of liability is, therefore,  
**GRANTED.**

Defendant/third-party plaintiff Kennedy moves for summary judgment, arguing that, in the passenger seat, she could not have anticipated or prevented Filippi's negligence.

To the extent that defendant/third-party defendant Filippi does not oppose the motion for summary judgment, this court finds that even where there is no opposition to a motion for summary judgment, the court is not relieved of its obligation to ensure that the movant has demonstrated her entitlement to the relief requested (see *Morette v. Kemper, Unitrin Auto and Home Ins. Co., Inc.*, 35 Misc.3d 200 [N.Y.Sup 2012]; *Zecca v. Ricciardelli*, 293 AD2d 31 [2<sup>nd</sup> Dept. 2002]).

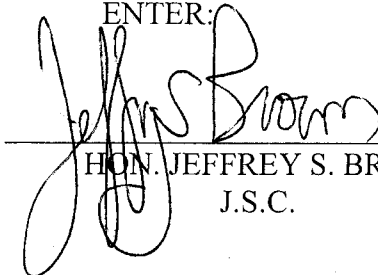
A licensed driver supervising an unlicensed driver with a learner's permit owes a duty to use reasonable care as an instructor, and he or she also owes a duty to take necessary measures to prevent negligence on the part of the driver with the learner's permit (*Lazofsky v. City of New York*, 22 AD2d [1<sup>st</sup> Dept. 1964]; *Kuebler v. Kuebler*, 90 AD3d 1611 [4<sup>th</sup> Dept. 2011]).

Here, genuine issues of material fact exist as to whether the passenger, Kennedy, breached her duty of care in supervising the operation of the motor vehicle by the unlicensed driver with a learner's permit, who is the passenger's niece, and whether she failed to use reasonable care in her capacity as a passenger (*Lazofsky*, supra).

The defendant/third-party plaintiff's motion for summary judgment is, therefore,  
**DENIED.**

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York  
May 30, 2012

ENTER:  
  
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J.S.C.

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**ENTERED**  
JUN 01 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE