

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
NASSAU COUNTY

<u>Trial/IAS:</u>	<u>Part 42</u>
<u>Motion Date:</u>	<u>5/21/01</u>
<u>Index No.:</u>	<u>7589/00</u>
<u>Mtn. Seq. No.:</u>	<u>002</u>

Present: Honorable Jerald S. Carter

-----X
MARY FANELLI,

Plaintiff,

-against-

JOSEPH MANCUSO, KEVIN IVAN JONES and
CHURCH OF JESUS CHRIST OF LATTER DAY
SAINTS,

Defendants.
-----X

The following papers were read on this application:

Notice of Motion and annexed Affirmation w/ Exhibits	1
Reply Affirmation w/ Exhibit	2
Affirmation in Opposition	3

Defendant's, JOSEPH MANCUSO ("MANCUSO"), Motion for an Order pursuant to CPLR §3212 dismissing the instant complaint and cross-claims, with prejudice, is granted.

This is an action to recover for personal injuries allegedly sustained by the Plaintiff as a passenger in the Defendant's, MANCUSO, motor vehicle that was involved in a two-car collision on December 10, 1999 at the intersection of East Broadway and Monroe Boulevard, Long Beach, New York.

The accident occurred when the MANCUSO vehicle, while traveling West on East Broadway, was struck by a motor vehicle operated by Defendant, KEVIN IVAN JONES ("JONES") as the JONES vehicle attempted to make a left hand turn North onto Monroe Boulevard.

Fanelli v. Mancuso, et al.
Index No. 7589/00

In support of his Motion, the Defendant submits the transcripts of the Plaintiff, himself and JONES.

The testimony of parties established that MANCUSO was traveling westbound on East Broadway at about 25 mph when, with a green light and while he was in the intersection of East Broadway and Monroe Boulevard, his vehicle was struck by the vehicle JONES was operating. Further, MR. JONES testified that he did not observe the traffic control device controlling traffic on Monroe Boulevard as he was making his left hand turn.

In opposition to the Motion, Plaintiff's counsel argues that there is an issue of fact as to whether he saw what was there to be seen and whether he used reasonable care to avoid the collision (see PJI 2:77.1 and 2:79).

However a driver is entitled to anticipate that other vehicles will obey traffic laws that require them to yield. *Stuart v. Wozniak*, 58 AD2d 993 lv. Denied, 43 NY2d 643.

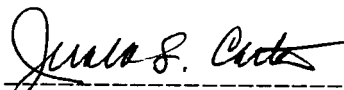
Here, Defendant, MANCUSO, had a green light and was entitled to anticipate that Defendant, JONES, would yield to traffic before making his left-hand turn (see, VTL §1141).

Under the facts of this case, counsel's argument that there are triable issues of fact is meritless.

Accordingly, Defendant, MANCUSO, shall have judgment dismissing the complaint and all cross-claims asserted against him.

Dated: Mineola, NY
July 11, 2001

ENTER,



A.J.S.C.

ENTERED

JUL 20 2001

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**