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**SHORT FORM ORDER**  
**SUPREME COURT OF THE STATE OF NEW YORK**

**PRESENT: HON. DANIEL MARTIN**  
**Acting Supreme Court Justice**

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**PATRICIA ATTANASIO and JOSEPH ATTANASIO** **TRIAL/IAS, PART 31**  
**NASSAU COUNTY**

**Plaintiffs.**

*- against -*

**Sequence No.: 001 & 002**  
**Index No.: 014517/06**

**LOIS LANESE, OLGA PARADISE and VINCENT PARADISE.**

**Defendants.**

\_\_\_\_\_  
**LOIS LANESE.**

**Plaintiff.**

**Index No.: 016315/06**

*- against -*

**OLGA PARADISE and VINCENT PARADISE.**

**Defendants.**

**The following named papers have been read on this motion:**

	<b>Papers Numbered</b>
<b>Notice of Motion and Affidavits Annexed</b>	<b>X</b>
<b>Notice of Cross-Motion and Affidavits Annexed</b>	<b>X</b>
<b>Answering Affidavits</b>	<b>X</b>
<b>Replying Affidavits</b>	<b>X</b>

Lois Lanese, as a defendant in the matter Attanasio, et. al. v. Lanese, et. al., (Index No. 14517/06) (hereinafter "action 1") moves for summary judgment dismissing the complaint as asserted against this defendant. Lois Lanese cross-moves for summary judgment in her capacity as a plaintiff on the issue of liability in the matter Lanese v. Paradise, et. al., (Index No. 16315-2006) (hereinafter "action 2"). Upon reading the papers submitted and due deliberation having been had herein, the motion and cross-motion are both granted.

The following facts are undisputed. On June 21, 2006 the vehicle operated by Ms. Lanese was proceeding westbound toward its intersection with Hewlett Avenue on Smith Street in Merrick, New York and the vehicle owned by defendant Vincent Paradise and operated by Olga Paradise was proceeding northbound on Hewlett toward said intersection. The vehicle

operated by Ms. Paradise struck that operated by Ms. Lanese in the driver's side door in the intersection. Plaintiff in action 1, Patricia Attanasio, was a passenger in the vehicle operated by Ms. Lanese. As a result of the accident Patricia Attanasio and her husband, Joseph Attanasio commenced action 1 against Ms. Lanese and Olga and Vincent Paradise alleging negligence on the part of the owners/operators of the vehicles involved in the accident which resulted in personal injuries to Ms. Attanasio. Mr. Attanasio maintains a cause of action for derivative claims. Ms. Lanese commenced action 2 against the Paradise defendants for personal injuries allegedly suffered as a result of Ms. Paradise's negligence.

Ms. Lanese now moves for summary judgment on the issue of liability in her capacity both as a defendant and as a plaintiff on the grounds that defendant Olga Paradise drove through a red light into the intersection and struck Ms. Lanese's vehicle while it was lawfully therein pursuant to a green light. In moving for summary judgment Ms. Lanese must demonstrate that there are no issues of fact which preclude summary judgment by the tender of evidence in admissible form. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). Any party opposing the motions must demonstrate a triable issue of fact through admissible evidence. *Id.*

In support of her motions Ms. Lanese first points to Ms. Paradise's deposition testimony wherein Ms. Paradise testified that on the date of the accident she was operating her vehicle with her daughter and granddaughter as passengers. She observed the traffic light at the intersection of Smith and Hewlett, but took her eyes off of the light when she turned around to her upset granddaughter approximately five to ten car lengths from the intersection. She did not know what color the light was when she entered the intersection and her vehicle made contact with the driver's side door area of Ms. Lanese's vehicle. (See, deposition transcript of Olga Paradise, pp. 5-7, 10-15, 25, 26).

Ms. Lanese testified that as she approached the intersection the light for her direction of travel was green and it remained green as she drove into the intersection. She observed the Paradise vehicle just before it made contact with hers. She described it as being "just like a flash" from the time she first observed the vehicle until it made contact with the driver's side door on her vehicle. (See, deposition transcript of Lois Lanese, pp. 11, 13, 14, 16).

Where, as here, Ms. Lanese demonstrates that the vehicle operated by Ms. Paradise struck Ms. Lanese's vehicle in an intersection and that Ms. Paradise entered the intersection against a red traffic signal in violation of Vehicle and Traffic Law §§1110 and 1111, she has met her *prima facie* burden of demonstrating entitlement to summary judgment on the issue of liability. See, Sheehan v. Marshall, 9 A.D.3d 403 (2<sup>nd</sup> Dep't 2004); White v. Clyburn, 284 A.D.2d 328 (2<sup>nd</sup> Dep't 2001); Guerriero v. Timberlake, 254 A.D.2d 393 (2<sup>nd</sup> Dep't 1998). Ms. Lanese having met her *prima facie* burden, the burden now shifts to any party opposing the motion to demonstrate a triable issue of fact. Zuckerman v. City of New York, *supra*.

In opposition plaintiffs Attanasio assert that issues of fact exist as to Ms. Lanese's comparative negligence. In support of this position counsel for these plaintiffs relies upon Ms. Lanese's deposition testimony at which she testified that:

1) she did not see the Paradise vehicle until it was at her door, observed it for "seconds" and she did "nothing" upon seeing it;

2) she was not sure of her speed; and

3) she did not remember the impact of her vehicle when it struck the sidewalk or a nearby fence after the collision.

It is noted that plaintiff Attanasios does not take the opportunity to set forth facts she observed as a passenger that would constitute negligence on the part of Lanese.

The Attanasios contend that based upon the record the court should conclude that an issue of fact exists as to whether Ms. Lanese should have observed the Paradise vehicle and taken evasive action, as well as the speed at which she was operating her vehicle.

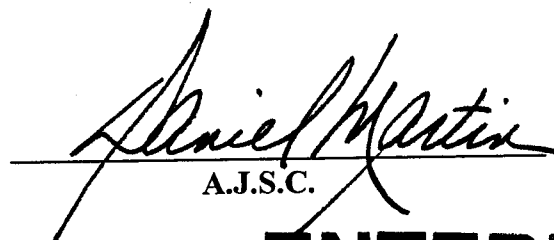
The Paradise defendants claim that an issue of fact exists as to whether Ms. Lanese failed to observe that which she should have observed by the proper use of her senses. In other words, these defendants assert that an issue of fact exists regarding whether Ms. Lanese, as a driver entering an intersection, failed through the proper use of her senses to observe a vehicle which was in the intersection or so near that a collision was likely to occur.

Where, as here, the driver of the vehicle which is lawfully in the intersection sees the offending vehicle which failed to yield the right of way immediately prior to impact, the court will find that there was insufficient time for the driver of the vehicle which was lawfully in the intersection to take evasive action. See, e.g., Meliarenne v. Prisco, 9 A.D.3d 353 (2<sup>nd</sup> Dep't 2004); Lupowitz v. Fogarty, 295 A.D.2d 576 (2<sup>nd</sup> Dep't 2002). Further, any claims that Ms. Lanese's speed is an issue under these circumstances is at most speculative and insufficient to raise a triable issue of fact. Meliarenne v. Prisco, supra; Lieberman v. Miller, 305 A.D.2d 640 (2<sup>nd</sup> Dep't 2003); Szczotka v. Adler, 291 A.D.2d 444 (2<sup>nd</sup> Dep't 2002).

Accordingly, based upon the foregoing, the motion and cross-motion are both granted and it is hereby directed that defendant Olga Paradise's negligence was the sole cause of the subject accident.

So Ordered.

Dated: June 18, 2008

  
A.J.S.C.

**ENTERED**

JUN 20 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**