

<b>Mazurczak v Smith</b>
2017 NY Slip Op 33501(U)
May 23, 2017
Supreme Court, Erie County
Docket Number: Index No. 2015-805555
Judge: Donna M. Siwek
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**SUPREME COURT CHAMBERS  
STATE OF NEW YORK**

**Donna M. Siwek**  
*Supreme Court Justice*

50 Delaware Avenue  
8<sup>th</sup> Floor, Part 29  
Buffalo, NY 14202

Katherine B. Roach, Confidential Law Clerk  
Ann M. Metz, Secretary  
(716) 845-9354 - fax : (716) 845-7502

May 23, 2017

Carl Morgan, Esq.  
Carl W. Morgan, PC  
85 Main St.  
Hamburg, NY 14075

Alyssa Jordan, Esq.  
Rupp Baase Pfalzgraf, et al  
1600 Liberty Bldg.  
Buffalo, NY 14202

Re: Mazurczak, Bernard v Smith, Jason; Natures Pride, LLC; County of Erie; Town of  
North Collins  
Index No. 2015-805555

***Memorandum Decision***

Dear Counselors:

The Court has considered the remaining motion for summary judgment in this matter brought by the defendants Jason M. Smith and Natures Pride, LLC. At oral argument, the Court granted the motions made on behalf of the defendants County of Erie and Town of North Collins. This action arises out of a motor vehicle accident which occurred on February 28, 2014 at the intersection of New Oregon Road and Genesee Road at approximately 12:20 p.m. Defendant Smith was operating a 2006 Ford dump truck in the course of his employment with Natures Pride, LLC. There is no stop sign or traffic control device controlling travel on Genesee Road at its intersection with New Oregon Road. There is a stop sign on New Oregon Road at its intersection with Genesee Road.

According to the plaintiff's testimony, he brought his vehicle to a stop at the stop sign and was stopped for approximately one minute. He saw two cars traveling on Genesee Road in each direction proceed through the intersection during that time. Defendant Smith was proceeding on Genesee Road, where the speed limit is 55 miles per hour. Smith was driving between 50 and 55 miles per hour, and as he approached the intersection, he saw the plaintiff's vehicle moving toward the stop sign. Because he was not sure whether the plaintiff's vehicle was going to stop, he slowed down to approximately 35 miles per hour. When he was approximately 25 yards from the intersection, Smith saw the plaintiff's vehicle was stopped. As Smith proceeded through the intersection, the plaintiff's vehicle entered the intersection. Smith stated that the plaintiff's vehicle "just shot right out". In an effort to react, and believing that the plaintiff entered the intersection to turn right on Genesee Road from New Oregon Road, Smith turned to the left and slammed on his brakes causing his vehicle to skid. Mazurczak testified that he saw Mr. Smith's vehicle "at the last

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second". The plaintiff was ticketed for violation of New York Vehicle and Traffic Law § 1142(a), failure to yield.

A motorist, aware of the presence of a stop sign on a subordinate highway, is entitled to assume that the driver on the subordinate highway will stop. See, NYPJI 2:80A. A driver has no duty to watch for and avoid a driver who might fail to stop or proceed with due caution at a stop sign. *Doxtader v. Janszuk*, 294 A.D.2d 859 (4<sup>th</sup> Dept. 2002). "It is well settled that a driver who has the right of way is entitled to anticipate that other vehicles will obey the traffic laws that require them to yield." *Rogers v. Edelman*, 79 A.D.3d 1803 (4<sup>th</sup> Dept. 2010); *Doxtader, supra*.

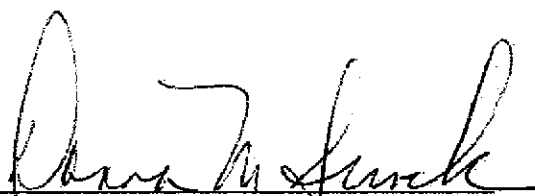
We find that the defendants Smith and Natures Pride have met their initial burden on this motion for summary judgment by establishing as a matter of law that the sole proximate cause of the accident was the plaintiff's failure to yield the right of way to the Smith truck. *Rogers, supra*. Defendant Smith saw the plaintiff's vehicle stopped at the intersection, and he was entitled to anticipate that the plaintiff's vehicle would remain stopped, and assume that he had the right of way and could proceed through the intersection. We find that the plaintiff has failed to raise a triable issue of fact and that the defendants have established as a matter of law that they were free from fault in the occurrence of the accident. *Rogers, supra*. We note that in meeting their initial burden, the defendants established that the plaintiff's vehicle suddenly entered the intersection and there was nothing that Smith could do to avoid the collision. *Hillman v. Eich*, 8 A.D.3d 989 (4<sup>th</sup> Dept. 2004). Here, the defendants established as a matter of law that the plaintiff was negligent in failing to see that which, under the circumstances, he should have seen in crossing in front of the defendant's vehicle when it was hazardous to do so. *Hillman, supra*. As the driver with the right of way, defendant Smith was entitled to anticipate that the plaintiff would obey the stop sign and pertinent traffic laws requiring him to yield the right of way to the Smith vehicle. Additionally, we note that the plaintiff has failed to offer any evidence that as he proceeded through the intersection, Smith had any time to take evasive action. See, *Miglioni v. LeRoy Holdings Co., Inc.*, 78 A.D.3d 1306 (4<sup>th</sup> Dept. 2010).

Plaintiff's testimony that he observed the Smith vehicle traveling between 65 and 70 miles per hour just prior to the collision is unavailing given that he testified that he saw the Smith vehicle "at the last second". Plaintiff also testified that he could not see Mr. Smith's vehicle prior to the impact, because there is a "hidden spot" in Genesee Road; however, this is inconsistent with his testimony that he saw two cars traveling in each direction prior to the accident. Finally, in the absence of an expert's affidavit as to visibility and/or the speed of the defendant's vehicle, we find that the plaintiff has failed to raise a triable issue of fact as to the negligence of Smith.

As the plaintiff has failed to raise a triable issue of fact as to Smith's alleged negligence, Smith and Nature Prides' motion for summary judgment dismissing the complaint as against them

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is granted.



DONNA M. SIWEK  
New York State Supreme Court Justice

cc: Thomas Navarro, Jr., Esq.  
Erie County Dept. of Law  
95 Franklin St., Ste. 1600  
Buffalo, NY 14202

Thomas Lewandowski, Esq.  
Webster Szanyi, LLP  
1400 Liberty Bldg.  
Buffalo, NY 14202