Occhipinti v Arminio
2018 NY Slip Op 31156(U)
May 11, 2018
Supreme Court, Suffolk County
Docket Number: 15-16550
Judge: Peter H. Mayer

SHORT FORM ORDER

INDEX No. 15-16550
CAL. No. 17-00723MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

Hon. PETER H. MAYER
Justice of the Supreme Court

MOTION DATE 9-29-17 (001)
MOTION DATE 11-3-17 (002)
ADJ. DATE 12-15-17
Mot. Seq. # 001 - MD
002 - MG

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SUSAN OCCHIPINTI, CHRIS OCCHIPINTI, and KRISTINA OCCHIPINTI,

Plaintiffs,

- against -

JENNIFER S. ARMINIO, VINCENT P. ARMINIO, LAUREN ARMINIO, MARISSA A. MANGANO, MARY ELLEN MARTINEZ, JOHN DOE 1, as a yet unidentified individual, and JOHN DOE 2, as a yet unidentified individual,

Defendants.

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Upon the following papers read on these motions for summary judgment ; Notice of Motion and supporting papers dated 1 - 15 ; Notice of Cross Motion and supporting papers 16 - 29 ; Answering Affidavits and supporting papers 30 - 31; 32 - 33 ; Replying Affidavits and supporting papers 34 - 35; 36 - 37 ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

ORDERED that the motion by defendants Marissa A. Mangano and Mary Ellen Martinez for summary judgment dismissing the complaint against them is denied; and it is further

ORDERED that the cross motion by plaintiffs Susan Occhipinti, Chris Occhipinti, and Kristina Occhipinti for partial summary judgment in their favor as to defendants' liability is granted.

This action was commenced by plaintiffs Susan Occhipinti and Kristina Occhipinti to recover damages for injuries they allegedly sustained on October 31, 2012, when their motor vehicle was struck by a vehicle operated by defendant Jennifer S. Arminio and owned by defendants Vincent Arminio and Lauren Arminio. Susan Occhipinti's husband, Chris Occhipinti, asserts a derivative claim for loss of services. The Arminio defendants assert a cross claim against defendants Marissa A. Mangano and Mary Ellen Martinez. The five car accident, allegedly precipitated by inoperative traffic lights caused by Superstorm Sandy, occurred at the intersection of North Ocean Avenue and Shaber Road in North Patchogue, New York.

By her bill of particulars, plaintiff Kristina Occhipinti claims she suffered the following injuries and conditions as a result of said accident: second degree burns; lacerations; scarring; disc bulges at levels C3-C4 and C5-C6; straightening of the cervical lordosis; a concussion; and loss of range of motion in her cervical spine. No bill of particulars describing Susan Occhipinti's alleged injuries has been submitted with the instant motions.

Marissa A. Mangano and Mary Ellen Martinez (the Mangano defendants) now move for summary judgment in their favor, arguing that they were not negligent, and that the Arminio defendants' actions were the sole proximate cause of plaintiffs' alleged injuries. The Mangano defendants also argue that Insurance Law § 5104 precludes plaintiff Kristina Solomito (nee Occhipinti) from recovering for non-economic loss, as she did not suffer "serious injury" within the meaning of Insurance Law § 5102 (d). In support of their motion, they submit, among other things, copies of the pleadings, a certified copy of an MV-104A police accident report, a transcript of nonparty Jessica Corrigan's deposition testimony, and an affirmation of Frank D. Oliveto, M.D. The Court has not considered those portions of said accident report entitled "Accident Description/Officer's notes," as they are inadmissible hearsay (*see* ***Memenza v Cole***, 131 AD3d 1020, 16 NYS3d 287 [2d Dept 2015]).

Plaintiffs cross-move for partial summary judgment in their favor as to defendants' liability, arguing that their actions were the sole proximate causes of plaintiffs' injuries. In support of their cross motion, and in opposition to defendants' motion, they submit copies of the pleadings, transcripts of the plaintiffs' deposition testimony, affirmations of Roger Simpson, M.D. and Craig Levitz, M.D., and various medical records. The Arminio defendants submit partial opposition to the Mangano/Martinez motion, arguing Marissa Mangano had a duty, pursuant to Vehicle and Traffic Law § 1142 (a), to yield the right of way to the vehicle operated by defendant Jennifer Arminio.

Marissa Mangano testified that at 12:14 p.m. on the date in question, she was operating a yellow motor vehicle owned by her mother, Mary Ellen Martinez. She explained that the electricity was out at her parents' house due to Superstorm Sandy and, as a result, she was driving to her uncle's home in Shirley, New York to take a shower. She indicated she was driving eastbound on Shaber Avenue, intending to reach its intersection with North Ocean Avenue, which runs north and south. She testified that as she arrived at the intersection, she saw the traffic light governing the intersection was not

functioning. Despite not recalling whether the traffic light was completely dark, or if it was blinking, she stated she brought her vehicle to a complete stop.

Mrs. Mangano testified that, initially, motor vehicles traveling in the northbound and southbound lanes of North Ocean Avenue were moving through the intersection but, eventually, all vehicles came to a stop. At that time, Mrs. Mangano was "[w]aiting for drivers to wave [her] on, waiting to see complete stops, [and] checking the lanes." Mrs. Mangano indicated that she intended to make a left turn onto North Ocean Avenue, and to travel northbound. She testified that while she was stopped, she saw another vehicle stopped in the southbound right lane of North Ocean Avenue, and "[m]ore than one" vehicle stopped in the northbound lanes. She stated that, despite the single vehicle stopped in the right southbound lane of North Ocean Avenue, she could see past that vehicle and observed no other vehicles approaching. Mrs. Mangano indicated that the stopped drivers in the northbound and southbound lanes of North Ocean Avenue began "waving on" her vehicle. In response, she stated that she accelerated gradually, moving her vehicle into the intersection. When her vehicle traveled as far as the southbound left lane of North Ocean Avenue, she observed a vehicle traveling toward her in that southbound left lane. She testified that, having first observed the other vehicle less than five seconds earlier, the two vehicles collided. Following its collision with the front of her vehicle, the second vehicle "hit three other vehicles" that were stopped in the northbound lanes of North Ocean Avenue.

Kristina Solomito (nee Occhipinti) testified that on the date in question, she was the front seat passenger in a motor vehicle being operated by her aunt, Susan Occhipinti. She indicated that their vehicle was stopped at the intersection in question for approximately 1 ½ minutes, and that she saw a yellow vehicle stopped on Shaber Road. A vehicle in front of the yellow vehicle proceeded into the intersection, followed by the yellow vehicle pulling forward into the intersection. She stated that she then witnessed a black vehicle traveling southbound in the left lane of North Ocean Avenue "at an excessive speed," while the yellow vehicle was about to make a left turn onto northbound North Ocean Avenue. The southbound vehicle thereafter collided with the yellow vehicle. She testified that she "blacked out for a couple of minutes" after seeing the collision. When she awoke, she realized that her aunt's vehicle had been struck by another vehicle. She believes both the yellow vehicle and the black vehicle made contact with her aunt's vehicle. She indicated that based upon her observation of the vehicle in which she was traveling, her head had struck its windshield. Questioned as to the black, southbound vehicle, Mrs. Solomito stated that it entered the intersection without slowing down or stopping.

Mrs. Solomito testified that as a result of the accident, she was unable to work for three months, that she saw various doctors, and that she attended physical therapy sessions through 2013. However, she stated that she has not undergone any medical treatment since then. Asked whether she had any "scheduled future medical appointments coming up," she stated that she did not, but that "right now, there's really nothing they can do for [her]." She indicated that she "still [has] pain in [her] neck and [her] shoulder every day," that she cannot look downwards for more than a "couple of seconds" without experiencing pain, that she has difficulty lifting things, and that she is very self-conscious about scars on her face and right shoulder.

Nonparty Jessica Corrigan testified that she was operating her motor vehicle northbound on North Ocean Avenue at the time of the accident. She stated that the traffic light at the intersection of Shaber Road and North Ocean Avenue was completely inoperative, explaining that it was not blinking or illuminated in any way. Ms. Corrigan indicated there were two vehicles stopped ahead of her, side by side, at the intersection; in the northbound left lane was a black Infiniti and, in the right lane, was a dark-colored pickup truck. She brought her vehicle to a halt behind the black Infiniti. Referring to the opposite side of North Ocean Avenue, she testified that there was a southbound minivan stopped in the right lane at the intersection, but that there was no vehicle in the southbound left lane. She stated that she also observed a yellow vehicle on Shaber Road, stopped at its intersection with the west side of North Ocean Avenue. Ms. Corrigan indicated that the various vehicles were stopped at the subject intersection, treating the inoperative traffic light as a stop sign.

Ms. Corrigan testified that the yellow vehicle slowly moved into the intersection, and was struck by a black vehicle traveling southbound on North Ocean Avenue at, she guesses, "definitely 75, 80 [miles per hour]." That collision, she stated, caused the yellow vehicle to travel north, onto a lawn, and the black vehicle careened into the northbound left lane of North Ocean Avenue, striking the black Infiniti head-on. Ms. Corrigan indicated that the impact caused the rear end of the Infiniti to strike both the front of her vehicle and the pickup truck in the right lane.

Jennifer Arminio testified that in the early afternoon of October 31, 2012, she was operating her father's black 2012 Mazda 3 southbound in left lane of North Ocean Avenue at approximately 50 miles per hour. She explained that she was driving from her home in Mount Sinai, New York, to her then-boyfriend's house in West Islip, New York. She indicated that she passed through approximately nine intersections governed by traffic lights on North Ocean Avenue between her home and the accident location, but did not recall whether those traffic lights were operational. When her attention was directed to the traffic light governing the intersection in question, she testified she was able to see it from a significant distance, "like 25" car lengths away. She further testified that she became aware the traffic light was inoperative at least 20 car lengths prior to reaching it. However, she stated there were approximately three vehicles traveling ahead of her vehicle which passed through the intersection unimpeded.

Ms. Arminio testified that she saw a yellow vehicle, for the first time, when it was traveling eastbound at "[m]aybe 30 to 40 [miles per hour]" on Shaber Road, and was "2 ½ to 4 car lengths" from entering the intersection. She stated that approximately "five to ten seconds" later, as she was entering the subject intersection, she "realized the [yellow vehicle] wasn't stopping" and stepped on her brakes. Ms. Arminio indicated that the yellow vehicle collided with the front passenger-side door of her vehicle. The force of the impact propelled her vehicle into the northbound lanes of North Ocean Avenue, causing it to strike two stopped vehicles. Upon questioning, Ms. Arminio stated that she never considered stopping at the subject intersection before passing through it.

A party moving for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers

(***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (*see* ***Vega v Restani Constr. Corp.***, 18 NY3d 499, 942 NYS2d 13 [2012]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue (*see* ***O'Brien v Port Auth. of N.Y. & N.J.***, 29 NY3d 27, 52 NYS3d 68 [2017]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*see* ***Ortiz v Varsity Holdings, LLC***, 18 NY3d 335, 339, 937 NYS2d 157 [2011]).

A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law (*see* ***Aponte v Vani***, 155 AD3d 929, 64 NYS3d 123 [2d Dept 2017]; ***Ricciardi v Nelson***, 142 AD3d 492, 493, 35 NYS3d 724 [2d Dept 2016]). Vehicle and Traffic Law § 1117 provides that:

> Except when directed to proceed by a police officer, every operator of a motor vehicle approaching an intersection governed by a traffic-control signal which is out of service or otherwise malfunctioning shall stop in the manner required for stop signs set forth in section eleven hundred seventy-two of this title, and proceed according to the rules of right of way for vehicles set forth in article twenty-six of this title.

A violation of this statute "constitutes negligence per se" (***Jeudy v Passmore***, 145 AD3d 764, 765, 43 NYS3d 455 [2d Dept 2016]). Vehicle and Traffic Law § 1172 (a) provides, in relevant part, that:

> every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

Further, Vehicle and Traffic Law § 1142 (a) provides, in relevant part, that:

> every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

A driver is also negligent "where he or she failed to see that which, through proper use of his or her senses, he or she should have seen" (***Aponte v Vani***, *supra* at 930). "Although a driver with a right-of-way also has a duty to use reasonable care to avoid a collision . . . a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for

failing to avoid the collision" (***Giwa v Bloom***, 154 AD3d 921, 921-922, 62 NYS3d 527 [2d Dept 2017], quoting ***Yelder v Walters***, 64 AD3d 762, 764, 883 NYS2d 290 [2d Dept 2009]). A driver who has the right-of-way "is entitled to anticipate that other drivers will obey traffic laws that require them to yield" (***Pivetz v Brusco***, 145 AD3d 806, 807, 43 NYS3d 457 [2d Dept 2016]).

Addressing, first, the Mangano defendants' motion for summary judgment on their liability, those defendants have failed to establish a prima facie case (*see generally* ***Alvarez v Prospect Hosp.***, *supra*). Though Ms. Mangano testified that the other drivers stopped at the intersection yielded the right of way to her, and allowed her to enter that intersection, questions of fact remain, namely, whether she had a duty to see the Arminio vehicle approaching and avoid entering the intersection (*see* Vehicle and Traffic Law § 1142 [a]; ***Aponte v Vani***, *supra*). Turning to that portion of the Mangano defendants' motion which argues plaintiff Kristina Solomito did not sustain a "serious injury" pursuant to Insurance Law § 5102 (d), they have, similarly, failed to establish a prima facie case of entitlement to summary judgment (*see generally* ***Winegrad v New York Univ. Med. Ctr.***, *supra*).

It is for the Court to determine in the first instance whether a plaintiff claiming personal injury as a result of a motor vehicle accident has established a prima facie case that he or she sustained "serious injury" and may maintain a common law tort action (*see* ***Licari v Elliott***, 57 NY2d 230, 455 NYS2d 570 [1982]; ***Tipping-Cestari v Kilhenny***, 174 AD2d 663, 571 NYS2d 525 [2d Dept 1991]). Insurance Law § 5102 (d) defines "serious injury" as "a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment."

A defendant moving for summary judgment on the ground that a plaintiff's negligence claim is barred by the No-Fault Insurance Law bears the initial burden of establishing a prima facie case that the plaintiff did not sustain a "serious injury" (*see* ***Toure v Avis Rent A Car Systems, Inc.***, 98 NY2d 345, 746 NYS2d 865 [2002]; ***Gaddy v Eyler***, 79 NY2d 955, 582 NYS2d 990 [1992]). When a defendant seeking summary judgment based on the lack of a serious injury relies on the findings of defendant's own witnesses, "those findings must be in admissible form, i.e., affidavits and affirmations, and not unsworn reports" to demonstrate entitlement to judgment as a matter of law (***Pagano v Kingsbury***, 182 AD2d 268, 270, 587 NYS2d 692 [2d Dept 1992]). Once a defendant meets this burden, plaintiff must present proof in admissible form which creates a material issue of fact (*see* ***Gaddy v Eyler***, *supra*; ***Pagano v Kingsbury***, *supra*; *see generally* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

A plaintiff claiming injury within the "permanent consequential limitation" or "significant limitation" of use categories of the statute must substantiate his or her complaints of pain with objective medical evidence showing the extent or degree of the limitation of movement caused by the injury and its duration (*see* ***Schilling v Labrador***, 136 AD3d 884, 25 NYS3d 331 [2d Dept 2016]; ***Rovelo v Volcy***,

83 AD3d 1034, 921 NYS2d 322 [2d Dept 2011]; ***McLoud v Reyes***, 82 AD3d 848, 919 NYS2d 32 [2d Dept 2011]). To prove significant physical limitation, a plaintiff must present either objective quantitative evidence of the loss of range of motion and its duration based on a recent examination or a sufficient description of the "qualitative nature" of plaintiff's limitations, with an objective basis, correlating plaintiff's limitations to the normal function, purpose, and use of the body part (*see* ***Perl v Meher***, 18 NY3d 208, 936 NYS2d 655 [2011]; ***Toure v Avis Rent A Car Systems, Inc.***, *supra*; ***McEachin v City of New York***, 137 AD3d 753, 756, 25 NYS3d 672 [2d Dept 2016]).

The 90/180 category of serious injury, as codified in Insurance Law § 5102 (d), requires that a plaintiff prove he or she experienced a "medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities." A plaintiff's ability to perform certain activities will often disqualify him or her from asserting a 90/180 claim (*see* ***Feeney v Klotz***, 309 AD2d 782, 765 NYS2d 639 [2d Dept 2003] [plaintiff who missed no time from school after accident unable to make 90/180 claim]; ***Pierre v Nanton***, 279 AD2d 621, 719 NYS2d 706 [2d Dept 2001] [plaintiff's absence from work for four months after his accident does not establish 90/180 claim if not ordered by physician]).

Dr. Frank Oliveto affirms he is a board-certified orthopedic surgeon, licensed to practice in the State of New York. He states he conducted an independent orthopedic evaluation of Kristina Solomito on May 9, 2017, reviewed Ms. Solomito's medical records, and referred to her bill of particulars. Dr. Oliveto indicates that at the time of the evaluation, Mrs. Solomito complained of neck, mid-back, and left shoulder pain. He states he tested Mrs. Solomito's range of motion using a goniometer, and compared the results to American Medical Association guidelines.

As to Mrs. Solomito's cervical spine, Dr. Oliveto avers that range of motion testing revealed the following measurements: flexion to 25 degrees, where the normal range of motion is 50 degrees; extension to 30 degrees, where normal is 60 degrees; left and right lateral flexion to 20 degrees bilaterally, where normal is 45 degrees; and left and right rotation to 40 degrees, where the normal range is 80 degrees. Dr. Oliveto notes that Mrs. Solomito expressed "subjective complaints of discomfort with motion . . . [but] there was no tenderness or spasm noted in the paracervical spinal musculature." As to Mrs. Solomito's thoracolumbar spine, range of motion testing revealed: flexion to 20 degrees, where the normal range of motion is 60 degrees; extension to 10 degrees, where normal is 25 degrees; right and left lateral flexion to 10 degrees, where normal is 25 degrees; and right and left lateral rotation to 10 degrees, where the normal range is 30 degrees. Dr. Oliveto once again notes that Mrs. Solomito expressed "subjective complaints of discomfort in the parathoracic area with motion but there were no spasms or tenderness noted in the parathoracic spinal musculature." As to Mrs. Solomito's left shoulder, Dr. Oliveto avers that range of motion testing revealed that while she made subjective complaints of discomfort, she possessed full range of motion in all aspects. Further, Dr. Oliveto states "[t]here is no crepitus with motion of the left shoulder," and "no objective clinical signs of instability, impingement or internal derangement." Dr. Oliveto also measured Mrs. Solomito's right shoulder, of which she had no subjective complaints of discomfort upon motion, and found it exhibited the normal full range of motion. However, Dr. Oliveto indicated that scarring was present on its posterior aspect.

In conclusion, Dr. Oliveto opines that Mrs. Solomito suffered a cervical sprain/strain, a thoracic sprain/strain, a contusion to her left shoulder, and an abrasion to her right shoulder, as a result of the subject accident, all of which are now "objectively resolved and healed." Dr. Oliveto further opines that while Mrs. Solomito had subjective complaints of discomfort, "there were no objective findings to justify these complaints" and "no evidence of a disability."

While Dr. Oliveto avers Mrs. Solomito's complaints were "subjective," he, nonetheless, measured significantly-reduced ranges of motion in her cervical and thoracic spine. Thus, a trier of fact must determine the voracity of Ms. Solomito's complaints and the extent of her alleged injuries. Further, even were the Court to assume, arguendo, her complaints to Dr. Oliveto were feigned, questions of fact remain as to her 90/180 claim (*see* Insurance Law § 5102 [d]). Though her verified bill of particulars states she missed only 10 weeks of work due to her alleged injuries, her deposition testimony asserted an absence of three months. Thus, there is a question of fact outstanding as to the actual period of time she was prevented from performing "substantially all of the material acts" which constitute her usual and customary daily activities. Finally, Dr. Oliveto did not address the size or shape of Ms. Solomito's alleged scars, or deny that they constituted "significant disfigurements" (*see* ***Garcia v County of Suffolk***, 149 AD3d 812, 51 NYS3d 192 [2d Dept 2017]; ***Cross v Labombard***, 127 AD3d 1355, 9 NYS3d 413 [3d Dept 2015]; ***Borquist v Hyde Park Cent. Sch. Dist.***, 107 AD3d 926, 966 NYS2d 888 [2d Dept 2013]; Insurance Law § 5102 [d]). Accordingly, the motion by defendants Marissa A. Mangano and Mary Ellen Martinez for summary judgment dismissing the complaint and cross claims against them is denied.

Moving to plaintiffs' cross motion for partial summary judgment as to defendants' liability, they have established a prima facie case of entitlement to summary judgment (*see generally* ***Alvarez v Prospect Hosp.***, *supra*). Despite their cross motion having been filed more than two months after the statutory deadline for the submission of summary judgment motions, the defendants in this matter did not object to such filing, and no prejudice is alleged. Accordingly, the Court has considered it (*see* ***Kun Sik Kim v State St. Hospitality, LLC***, 94 AD3d 708, 941 NYS2d 269 [2d Dept 2012]).

Susan Occhipinti testified that on the date in question, she was operating her Infiniti Q30 motor vehicle northbound on North Ocean Avenue with her niece, Kristina Occhipinti (now Solomito), as the front-seat passenger. She stated that she stopped her vehicle at the intersection of North Ocean Avenue and Shaber Road because the traffic signal controlling that intersection was not functional, due to power outages caused by Superstorm Sandy. She further stated that it was her understanding that when a traffic signal is not functional, the law mandated she stop at the intersection. Mrs. Occhipinti testified that her vehicle was stopped at the intersection for approximately a minute "[t]o let traffic out of Shaber Road." She stated that she observed one vehicle pull out of Shaber Road to her right, then make a right turn to travel northbound on North Ocean Avenue. She then saw a vehicle come out of Shaber Road, to her left, and make a left turn to head northbound on North Ocean Avenue. Finally, she "waited for the little yellow car to, also, come out" because "that was the last car [exiting Shaber Road]." Mrs. Occhipinti indicated that although she "blacked out" soon thereafter, she witnessed a black vehicle travel southbound on North Ocean Avenue "at an excessive speed," fail to stop for the inoperative traffic light, and collide with the yellow vehicle entering the intersection from Shaber Road. Upon questioning, Mrs. Occhipinti was unable to state with certainty that the yellow vehicle came to a complete stop before

entering the intersection, but explained it "proceeded with caution . . . to see if we all were going to remain stopped, and then just came out [into the intersection]."

The deposition testimony of the parties, as well as that of nonparty Jessica Corrigan, demonstrated, prima facie, that defendants violated the Vehicle and Traffic Law. Specifically, it has been established, by her own admission, that defendant driver Jennifer Arminio violated Vehicle and Traffic Law § 1117 by failing to stop at the inoperative traffic signal in question (*see also* Vehicle and Traffic Law § 1140 [a]). In addition, defendant driver Marissa Mangano's testimony that she entered the subject intersection, failed to observe Ms. Arminio's approaching vehicle, and collided with such vehicle was sufficient to establish a violation of Vehicle and Traffic Law §§ 1172 (a) and 1142 (a) (*see also* ***Aponte v Vani***, *supra*). In addition, as to defendants Vincent Arminio, Lauren Arminio, and Mary Ellen Martinez, Vehicle and Traffic Law § 388 (1) provides that "[e]very owner of a vehicle used or operated in this state shall be liable and responsible for . . . injuries to person or property resulting from negligence in the use or operation of such vehicle . . . by any person using or operating the same with the permission, express or implied, of such owner." Thus, the burden shifted to defendants to raise a triable issue (*see generally* ***Vega v Restani Constr. Corp.***, *supra*).

In opposition to plaintiffs' cross motion, the Mangano defendants argue that the evidence submitted by plaintiffs in support of their cross motion– namely the deposition transcripts of Kristina Solomito, Susan Occhipinti, and Chris Occhipinti– are inadmissible due to their being unsigned. However, those transcripts are "admissible under CPLR 3116 (a) since they were submitted by the party deponents themselves and, accordingly, those transcripts were adopted as accurate by those deponents" (***Pavane v Marte***, 109 AD3d 970, 970, 971 NYS2d 562 [2d Dept 2013]). In addition, plaintiffs explicitly relied upon the transcripts submitted by the Mangano defendants in their motion in chief. Beyond their admissibility argument, defendants submit no evidence raising a triable issue. Accordingly, the motion by plaintiffs for partial summary judgment in their favor as to defendants' negligence is granted.

Dated: May 11, 2018

PETER H. MAYER, J.S.C.