SHORT FORM ORDER **INDEX NO. 623989/2017**

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:
Hon. Paul J. Baisley, Jr., J.S.C.

ADAM JONES,

Plaintiff,

-against-

MARIE C. GUIRAND,

Defendant.

ORIG. RETURN DATE: January 2, 2019
FINAL RETURN DATE: January 2, 2019
MOT. SEQ. # 001 MG

PLTF'S ATTORNEY:
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DEFT'S ATTORNEY:
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Upon the following papers read on this motion for partial summary judgment ; Notice of Motion and supporting papers dated November 17, 2018 ; Answering Affidavits and supporting papers dated December 17, 2018 ; Replying Affidavits and supporting papers dated December 24, 2018 ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by plaintiff Adam Jones for partial summary judgment in his favor on the issue of defendant's liability is granted; and it is further

ORDERED that the parties shall appear for a preliminary conference at 10:00 a.m. on February 20, 2019, at the DCM-J Part of the Supreme Court, One Court Street, Riverhead, New York.

This action was commenced by plaintiff Adam Jones to recover damages for injuries he allegedly sustained on November 22, 2016, when his motor vehicle collided with a motor vehicle operated by defendant Marie C. Guirand.

Plaintiff now moves for partial summary judgment in his favor as to defendant's liability, arguing that defendant violated the Vehicle and Traffic Law and, therefore, was negligent per se in the happening of the subject motor vehicle accident. In support of his motion, plaintiff submits copies of the pleadings, his own affidavit, and a certified copy of an MV-104A police accident report. Initially, the Court notes it did not consider that portion of the police accident report entitled "Accident Description/Officer's notes," as statements therein are inadmissible hearsay (*see Memenza v Cole*, 131 AD3d 1020, 16 NYS3d 287 [2d Dept 2015]).

In his affidavit, plaintiff states that at approximately 3:10 p.m. on the date in question, he was operating his motor vehicle eastbound on Dakota Avenue in Islip, New York, near its intersection with Illinois Avenue. Plaintiff indicated that no traffic control devices regulated his travel on Dakota Avenue, but that there was a stop sign controlling vehicles entering Dakota Avenue from Illinois Avenue. He

avers that when he entered the intersection of Dakota Avenue and Illinois Avenue, defendant's vehicle, which was traveling southbound on Illinois Avenue, "appeared out of nowhere in front of [his vehicle] after it had disregarded the stop sign [on Illinois Avenue]." Plaintiff states that defendant's vehicle was traveling "at a very high rate of speed," and that a collision "happened so fast that [he] had no opportunity to take any evasive actions."

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 plaintiff "is no longer required to show freedom from comparative fault in order to establish his prima facie entitlement to judgment as a matter of law on the issue of liability" (*Merino v Tessel*, 166 AD3d 760, 760, 87 NYS3d 554 [2d Dept 2018]; *see Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]). The Vehicle and Traffic Law establishes standards of care for motorists, and an unexcused violation of such standards of care constitutes negligence per se (*see Shui-Kwan Lui v Serrone*, 103 AD3d 620, 959 NYS2d 270 [2d Dept 2013]; *Barbieri v Vokoun*, 72 AD3d 853, 900 NYS2d 315 [2d Dept 2010]; *Coogan v Torrisi*, 47 AD3d 669, 849 NYS2d 621 [2d Dept 2008]). Vehicle and Traffic Law § 1142 (a) provides, in relevant part:

> [E]very 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.

Thus, "a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law § 1142 (a) and is negligent as a matter of law" (*Hunt v New York City Tr. Auth.*, 166 AD3d 735, 736, 87 NYS3d 563[2d Dept 2018]). Moreover, an operator of a motor vehicle has a "common-law duty to see that which [he or she] should have seen through the proper use of [his or her] senses" (*Botero v Erraez*, 289 AD2d 274, 275, 734 NYS2d 565, 566 [2d Dept 2001]; *see also Ferrara v Castro*, 283 AD2d 392, 724 NYS2d 81 [2d Dept 2001]).

Plaintiff's submissions established a prima facie case of entitlement to judgment in his favor on the issue of defendant's liability for his alleged injuries (*see Kraynova v Lowy*, 166 AD3d 600, 87

NYS3d 653 [2d Dept 2018]); *see generally Alvarez v Prospect Hosp.*, *supra*). Specifically, plaintiff demonstrated that defendant's vehicle entered into the subject intersection without yielding the right-of-way to his vehicle, and that he had an inadequate time to avoid a collision (*see Mastricova v Ruderman*, 164 AD3d 1435, 82 NYS3d 546 [2d Dept 2018]). The burden then shifted to defendant to raise a triable issue (*see generally Vega v Restani Constr. Corp.*, *supra*).

Defendant opposes plaintiff's motion, arguing that numerous questions of fact remain regarding what plaintiff saw before the collision occurred, how fast plaintiff's vehicle was traveling, and "whether defendant's vehicle was so close to the intersection when the plaintiff began to enter as to constitute an immediate hazard such that the plaintiff should not have proceeded into the intersection." Defendant's counsel also argues that "depositions must be conducted and discovery completed before the issue of liability as between the parties can be determined."

In her affidavit, Ms. Guirand states that at the date and time in question, she was operating her motor vehicle southbound on Illinois Avenue, which is regulated by a stop sign at its intersection with Dakota Avenue. She indicates that she "brought [her] vehicle to a complete stop at the stop sign" for approximately 10 seconds. She states that prior to entering the intersection, she looked to her left and saw no cars approaching, then looked to her right and "observed a vehicle which [she] later learned was operated by plaintiff . . . heading eastbound on Dakota Avenue." She avers that plaintiff's vehicle was "at least seven to eight car lengths from the intersection [and appeared] far enough away for [her] to safely cross the intersection." However, she states that after she entered the intersection at "less than 20 miles per hour," after her vehicle had "completely crossed" the westbound lane of Dakota Avenue, and after "the rear of [her] car was in the eastbound lane of Dakota Avenue," she "felt a tremendous crash to the rear passenger side of [her] vehicle."

Defendants fail to raise a triable issue (*see Ming-Fai Jon v Wager*, 165 AD3d 1253, 87 NYS3d 82[2d Dept 2018]). Initially, summary judgment may not be avoided based on a claim that discovery is needed "unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence" (*Anne Koplick Designs, Inc. v Lite*, 76 AD3d 535, 536, 906 NYS2d 331 [2d Dept 2010], quoting *Ruttura & Sons Constr. Co. v J. Petrocelli Constr.*, 257 AD2d 614, 615, 684 NYS2d 286 [2d Dept 1999]; *see Wienfeld v HR Photography, Inc.*, 149 AD3d 1014, 52 NYS3d 458 [2d Dept 2017]). Here, there is no evidentiary basis suggesting discovery "might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (*Skura v Wojtlowski*, 165 AD3d 1196, 1200, 87 NYS3d 100 [2d Dept 2018], quoting *MVB Collision, Inc. v Progressive Ins. Co.*, 129 AD3d 1040, 1041, 13 NYS3d 139 [2d Dept 2015] [internal quotations and citations omitted]).

Regarding defendant's assertion that she came to a complete stop and the stop sign controlling her direction of travel is not dispositive (*see Kraynova v Lowy*, *supra*). As to defendant's arguments regarding what plaintiff could see, and whether he had a duty to avoid colliding with defendant's vehicle, it is axiomatic that "[a]lthough 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" (*Rohn v Aly*, ___AD3d___, 2018 NY Slip Op 08966 [2d Dept 2018], quoting *Yelder v Walters*, 64 AD3d 762, 764,

883 NYS2d 290 [2d Dept 2009] [internal quotes and citations omitted]). Whether plaintiff had sufficient time to avoid the collision is a question of comparative negligence, left for the damages phase of this proceeding, and does not preclude the Court's finding of liability on the part of the defendant (*see Rodriguez v City of New York*, 31 NY3d 312, 76 NYS3d 898 [2018]).

Accordingly, the motion by plaintiff for partial summary judgment on the issue of defendant's liability is granted.

Dated: 1/24/19

HON. PAUL J. BAISLEY, JR., J.S.C.