To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
PRESENT: HON. SAM D. WALKER, J.S.C.

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MARCIA A. JAMES,

Plaintiff,

-against-

CONNOR PAUL QUIGLEY, KEVIN QUIGLEY and MICHAEL G. BEAUMONT,

Defendants.

---x

DECISION and ORDER
Index No. 59485/2018
Seq # 2 & 3

Action No. 1

---x

DERRICKA MITCHELL,

Plaintiff,

-against-

MICHAEL G. BEAUMONT, MARCIA A. JAMES, and CONNOR PAUL QUIGLEY,

Defendants.

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Index No. 65005/2018

Action No. 2

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MICHAEL G. BEAUMONT,

Plaintiff,

-against-

CONNOR PAUL QUIGLEY,

Defendant.

---x

Index No. 59335/2019

Action No. 3

The following papers were received and considered in connection with the motion for summary judgment by Michael G. Beaumont:

Notice of Motion/Affirmation in Support/Exhibits A-J
Affirmation in Opposition
Affirmation in Opposition/Exhibit A
Reply Affirmation

The following papers were received and considered in connection with the motion by Marcia A. James for summary judgment on the issue of liability and to strike the first and second affirmative defenses of Connor Paul Quigley and Kevin Quigley and the first affirmative defense of Michael G. Beaumont:

Notice of Motion/Affirmation/Exhibits A-K
Affirmation in Opposition

Upon the foregoing, it is ordered that the Beaumont's and motions are both granted.

Factual and Procedural Background

Action 1, 2 and 3 are all personal injury actions arising out of an automobile accident which occurred on August 5, 2017. The first action was commenced on June 18, 2018, and the defendants served and filed their answers, joining issue. The second action was commenced on September 25, 2018, and the defendants served and filed an answer, joining issue. Action 1 and 2 were consolidated for the purpose of a joint trial, pursuant to this Court's Decision and Order dated June 18, 2019. Action 3 was commenced on June 20, 2019 and was consolidated with Actions1 and 2 for joint trial and discovery, pursuant to a So-Ordered Stipulation (Lefkowitz, J.), dated December 3, 2019.

The subject accident occurred at the intersection of Bedford Avenue and Grandview Avenue in Mount Vernon and involved the vehicle operated by the defendant, Connor Paul Quigley ("Quigley"), traveling westbound on Bedford Avenue and was controlled by a stop sign and the vehicle operated by the defendant, Michael G. Beaumont ("Beaumont"), traveling southbound on Grandview Avenue and not controlled by a stop sign. The plaintiff in Action 1 and a defendant in Action 2, Marcia James ("James") and the plaintiff in Action 2, Derricka Mitchell ("Mitchell") were passengers in the vehicle

operated by Beaumont.

Beaumont, by his attorney, now files a motion pursuant to CPLR 3212,seeking an order granting summary judgment, dismissing the complaint against him filed by James and all cross-claims in Action 1; and dismissing the complaint filed against him by Mitchell and all cross-claims in Action 2, on the grounds that there is no evidence that Beaumont acted negligently.

Quigley and Kevin Quigley, by their attorney, oppose the motion, arguing that Quigley testified at his deposition that he stopped at the stop sign and it was his intention to proceed straight on Bedford Avenue. He further testified that his vision of Grandview Avenue was impeded by cars parked along the parking lands and he stopped for one second before inching forward to see around the parked cars. He stated that he was moving forward slowly and was not in the intersection when he saw the Beaumont vehicle on Grandview Avenue and stopped his vehicle. Quigley stated that when he stopped, the front of his vehicle was at the beginning of the intersection with the front wheels just pass the white stop line adjacent to the stop sign and at that point, he observed the Beaumont vehicle flying out at the last second and he stopped his vehicle. He estimated the speed of the Beaumont vehicle to be close to 40 miles per hour. Quigley further stated that had Beaumont moved his vehicle left, he could have avoided the collision, but instead he sped up and at the time of impact, Quigley's vehicle was at a complete stop.

Mitchell, by her attorney, also opposes Beaumont's motion, arguing that at the time of the accident, she was a restrained rear seat passenger in the motor vehicle driven by Beaumont and the disputed fact is the degree of culpability to be attached to both Beaumont and Quigley. Mitchell's attorney asserts that Beaumont testified that he first

observed Quigley's vehicle moving and coming through the stop sign. He then testified that he took his time through the intersection and when he observed the vehicle entering the intersection, he took his foot off the gas and the front of his vehicle struck the side of Quigley's vehicle.

In reply, Beaumont argues that neither opposing party raised a question of fact to justify denial of a grant of summary judgment to Beaumont. His attorney argues that Mitchell's opposition is demonstrably false and speculation as to whether Beaumont could have avoided being T-boned in an intersection where he had the right of way is insufficient to create an issue of fact.

James, by her attorney, also files a motion for an order granting summary judgment in her favor and against Quigley and Kevin Quigley and striking the affirmative defenses alleging she assumed the risk, that she engaged in wrongdoing or alleging culpable conduct, contributory negligence and/or assumption of risk attributable to James. Her attorney argues that those defendants were negligent as a matter of law and such negligence was the proximate cause of the accident. James asserts that he was an innocent passenger and is not restricted by potential issues of comparative negligence between the drivers of the two vehicles.

James further argues that Quigley violated Vehicle Traffic Law § 1142[a], by failing to yield the right of way to an oncoming vehicle and therefore, summary judgment is warranted. She also contends that she is not responsible for the accident and thus the affirmative defenses have no merit.

In opposition, Quigley and Kevin Quigley, by their attorney, oppose the motion, proffering the same arguments utilized to oppose Beaumont's motion and also noting that

the vehicle operated by Beaumont was owned by James. The attorney asserts that based upon the testimony provided, James is not simply an innocent passenger, but can be found to have negligently entrusted her vehicle to Beaumont.

DISCUSSION

A party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

In order to establish a prima facie entitlement to judgment as a matter of law, it is incumbent upon the movant to come forward with evidentiary proof, in admissible form, demonstrating the absence of any triable issues of fact on the issue of liability (*see Franks v G & H Real Estate Holding Corp.*, 16 AD3d 619 [2d Dept 2005], *citing*, *Welwood v Association for Children with Down Syndrome*, 248 AD2d 707, 708 [2d Dept 1998]).

In this case, the evidence demonstrates Beaumont's and James' prima facie entitlement to judgment as a matter of law by establishing that Quigley's vehicle proceeded into an intersection controlled by a stop sign without yielding the right of way to the approaching vehicle (*see* Vehicle and Traffic Law § 1142[a]), thereby shifting the burden to Quigley to demonstrate the existence of a factual issue requiring a trial (*see Goemans v County of Suffolk*, 57 AD3d 478, 479 [2d Dept 2008] ["the County established its prima facie entitlement to judgment as a matter of law by evidence that Sellers failed to yield the right-of-way upon entering the subject intersection in violation of Vehicle and Traffic Law § 1142(a) and thus was negligent as a matter of law."]; *Thompson v Schmitt*, 902 NYS.2d 606, 607 [2d Dept 2010] [Plaintiff established prima facie entitlement to

judgment as a matter of law on the issue of liability by demonstrating "that the defendant driver, who was faced with a stop sign at the intersection ...negligently entered the intersection without yielding the right of way to his approaching vehicle and that this was the sole proximate cause of the accident"])

The fact that Quigley was required to stop his vehicle at a stop sign, while Beaumont's route of travel was not encumbered by a requirement to stop, established that Quigley failed to yield the right of way to Beaumont[1] (*Id.*.; *see also*, *Szczotka v Adler*, 291 AD2d 444 [2d Dept 2002])[2]. "A driver who fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law" (*see Gergis v Miccio*, 39 AD3d 468, 468 [2d Dept 2007]; *see also Maliza v Puerto-Rican Transp. Corp.*, 50 AD3d 650 [2d Dept 2008]).

Furthermore, Quigley was obligated to see that which by the proper use of his senses he should have seen, and Beaumont, as the driver with the right-of-way, was entitled to anticipate that Quigley would obey traffic laws which required him to yield (*see Moussouros v Liter*, 22 AD3d 469, 470 [2d Dept 2005]).

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[1] VTL §1142 specifically provides that "Except when directed to proceed by a police officer, 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" (VTL § 1142[a]).

[2] In *Szczotka v Adler*, the plaintiff moved for summary judgment on the issue of liability asserting that the defendant failed to stop at the stop sign. In opposition, the defendant asserted that he did stop at the stop sign and that the plaintiff must have been speeding. The Second Department held that "[r]egardless of whether the defendant stopped at the stop sign, the plaintiff established that the defendant violated Vehicle and Traffic Law § 1142(a), by failing to yield the right of way to her"(*Szczotka v Adler*, 291 AD2d 444 [2d Dept 2002]).

In opposition, the affirmations submitted contending that there are different versions of the accident, fail to create any issues of fact with regard to Quigley's liability. Quigley testified that his vision of Grandview Avenue was impeded by parked cars and that he stopped for one second and then proceeded to inch forward because he could not see around the parked cars and saw Beaumont's vehicle coming at 30 to 40 miles per hour. Beaumont testified that he was driving below 30 miles per hour, when Quigley's vehicle entered the intersection and his vehicle was T-boned. Mitchell testified that she was sitting in the rear passenger seat of the vehicle Beaumont was operating and observed Quigley's vehicle moving and impacted their vehicle after a few seconds. She testified that Beaumont was traveling at approximately 25 miles per hour when she observed Quigley's vehicle. None of the testimony provided by any of the parties creates an issue of fact as to the proximate cause of the accident nor to indicate that Quigley did not violate the Vehicle Traffic Law.

Accordingly, based upon the foregoing, it is

ORDERED that Beaumont's motion for summary judgment dismissing the complaints and all cross-claims against him, is granted; and it is further

ORDERED that James' motion for summary judgment dismissing the complaint against her and also dismissing Quigley's first and second affirmative defenses and Beaumont's first affirmative defense as to James, is granted.

The parties are directed to appear before the Settlement Conference Part on a date to be determined.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
September 29, 2020

HON. SAM D. WALKER, J.S.C.