

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - April 16, 2018

LEONARD B. AUSTIN, J.P.
SHERI S. ROMAN
JEFFREY A. COHEN
BETSY BARROS, JJ.

2017-06251

DECISION & ORDER

Adele A. Masticova, respondent, v Bernard Ruderman,
et al., appellants.

(Index No. 50279/17)

Marin Goodman, LLP, Harrison, NY (Christopher J. Walsh of counsel), for
appellants.

Rutberg Breslow (Lawrence A. Breslow and Pollack, Pollack, Isaac & DeCicco, LLP,
New York, NY [Brian J. Isaac, and Jillian Rosen], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an
order of the Supreme Court, Dutchess County (Maria G. Rosa, J.), dated May 26, 2017. The order
granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained personal injuries when her vehicle collided with a
vehicle operated by the defendant Bernard Ruderman and owned by the defendant Marlene A. Golia
at the intersection of Mills Street and Columbus Drive in Dutchess County. The plaintiff's vehicle
was traveling on Mill Street, which was not controlled by any traffic device, and the defendants'
vehicle was traveling on Columbus Drive, which was controlled by a stop sign.

The plaintiff commenced this action against the defendants. The plaintiff moved for
summary judgment on the issue of liability, contending that Ruderman was negligent in failing to
yield the right-of-way in violation of the Vehicle and Traffic Law § 1142(a). The Supreme Court

September 26, 2018

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granted the motion, and the defendants appeal.

The plaintiff established her prima facie entitlement to judgment as a matter of law by demonstrating that Ruderman negligently drove into the intersection on a street controlled by a stop sign without yielding the right-of-way to the plaintiff's vehicle (*see* Vehicle and Traffic Law § 1142[a]; *Amalfitano v Rocco*, 100 AD3d 939, 940; *Czarnecki v Corso*, 81 AD3d 774, 775; *Mohammad v Ning*, 72 AD3d 913, 914). In support of the motion, the plaintiff submitted a certified copy of a police accident report which contained Ruderman's admission that he failed to stop at the stop sign before entering the intersection. The plaintiff also proffered her own affidavit and the affidavit of a nonparty witness, stating, in effect, that Ruderman failed to stop at the stop sign.

In opposition, the defendants failed to raise a triable issue of fact. Contrary to the defendants' contention, a plaintiff is not required to demonstrate the absence of her own comparative negligence to be entitled to summary judgment on the issue of liability (*see Rodriguez v City of New York*, 31 NY3d 312).

Accordingly, we agree with the Supreme Court's determination granting the plaintiff's motion for summary judgment on the issue of liability.

AUSTIN, J.P., ROMAN, COHEN and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court