



Motion Success in Defense of Motor Vehicle Action

Carter Conboy obtained a successful result for our client, the defendant, who was involved in a motor vehicle accident. The plaintiff, who was operating a motorcycle, gestured to the defendant indicating that he would yield and allow the defendant to make a left turn at an intersection, although he had the right of way. The defendant made a very brief assessment of traffic prior to making the turn. The plaintiff proceeded through the intersection despite his prior gesture and struck the defendant's vehicle as it made its turn.

After [Carter Conboy](#) successfully obtained summary judgment for the defendant, dismissing the plaintiff's Complaint, the plaintiff appealed. The Appellate Division, Third Department affirmed the lower Court's Decision, in favor of the defendant, finding that the plaintiff failed to raise any question of fact that he was not the cause of the accident. Writing for a unanimous Court, Justice Rose noted, among other things, that since the plaintiff gestured that he would yield the right of way to the defendant, he assumed the duty to do so in a reasonable manner. In addition, the fact that the defendant made an independent check for traffic did not negate the right she had to rely upon the plaintiff's gesture representing that the plaintiff would allow the client to turn at the intersection before the plaintiff proceeded. The plaintiff argued principally that by revving his motorcycle, he demonstrated that he was going to proceed despite giving the initial gesture. While the Court did not expressly address whether the plaintiff lacked the ability to rescind the gesture after yielding the right of way to the client, it highlighted its finding that the plaintiff did not ensure that the defendant understood that the plaintiff was no longer willing to yield the right-of-way, before the plaintiff proceeded.

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