

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOHN W. BURKE

Justice

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PHILIPPE TALIO,

TRIAL/I.A.S. PART 3
NASSAU COUNTY

Plaintiff,

INDEX NO. 19014/99

-against-

RITA CIMINO, THOMAS D. NEWMAN and
KEY BANK, U.S.A., N.A.,

MOTION DATE: 8/4/00
MOTION NO. 002

Defendants.

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Notice of Motion, Affs. & Exs.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Briefs: Plaintiff's/Petitioner's.....	<u> </u>
Defendant's/Respondent's.....	<u> </u>

Upon the foregoing papers, it is ordered that this motion by plaintiff for summary judgment as to liability against defendants is disposed of as hereinafter provided.

In this action the plaintiff seeks money damages for injuries sustained in a three vehicle rear-end accident which occurred on February 17, 1999 in the center lane of the Southern State Parkway near the Wantagh Parkway in Nassau County.

Defendant, Newman, was operating a vehicle bearing N.Y. license plate number U295ZU, which vehicle was (according to the Complaint) owned by Rita Cimino and Key Bank, U.S.A., N.A. Immediately in front of him was a vehicle owned and operated by the plaintiff. A black Cougar was the first vehicle in the chain collision but its operator removed the vehicle without exchanging information and before the arrival of the police.

Defendant, Newman, testified at his deposition that he was proceeding east on Southern State Parkway behind a Tempo owned by plaintiff which, in turn, was behind the black Cougar. Newman was traveling at 40 miles per hour approximately 2 car lengths behind the Talio vehicle. Defendant, Newman, testified that he saw the plaintiff's brake lights go on less than five seconds before the impact. He saw traffic moving in the lane to the right, remained in the center lane and "heavily" applied his brakes. He could feel the anti-lock mechanism working and estimated he was moving at 5-10 miles per hour when he struck plaintiff's vehicle. It was his

testimony that "[i]t was like one quick reaction and [he] was already on top of [the Talio vehicle]".

Defendant's attorney claims that Mr. Newman's testimony was that plaintiff stopped short and stopped abruptly. Defendant did not so testify.

Nevertheless, "'When a rear-end collision occurs * * such collision is sufficient to create a prima facie case of liability on the part of defendant and imposes a duty of explanation with respect to the operator of the offending vehicle * * When a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle * * [c]onclusory allegations * * in opposition do not rebut the inference of negligence created by the unexplained rear-end collision' (*Young v City of New York*, 113 AD2d 833, 834; see also, *O'Callaghan v Flitter*, 112 AD2d 1030)." (*Benyarko v. Avis Rent A Car System, Inc.*, 162 A.D.2d 572, 573; also see *Barile v. Lazzarini*, 222 A.D.2d 635).

The motion is granted and the plaintiff shall have judgment as to liability against the defendant driver and owners.

Plaintiff shall serve a copy of this order upon the attorneys for defendants within 10 days of the date hereof.

Dated: OCT 30 2000


J. S. C.