

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

VICTOR O'CONNOR,

Plaintiff,

- against -

BAHRAM MAH-ABADI, MELISSA MAH-ABADI,
YOUNGS FARM THE ANNEX., and
BEAGAN J.Y. GOOTH,

Defendants.

TRIAL / IAS PART
NASSAU COUNTY

Index No. 11927/99

Motion Sequence No. 02

The following papers having been read on this motion:

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

The defendants Youngs Farm The Annex, Inc. and Beagan J.Y. Gooth move for a court order pursuant to CPLR 3212 granting summary judgment and dismissing the complaint upon the ground that no triable issues of fact exist as to the liability of the defendants Youngs Farm The Annex, Inc. and Beagan J.Y. Gooth. The plaintiff opposes the defense motion.

This is personal injury action arising from a motor vehicle accident that happened on October 16, 1997 on Glen Cove Avenue, approximately 300 feet south of the intersection with Kissam Lane in the Village of Glen Head, Town of North Hempstead, County of Nassau, State of New York. The plaintiff commenced this action by the service of the summons and complaint on May 7, 1999. The defendants Youngs Farm The Annex, Inc. and Beagan J.Y. Gooth interposed an answer on September 2, 1999. The

plaintiff served a verified bill of particulars on September 17, 1999 and a supplemental bill of particulars on December 21, 1999.

On January 11, 1999, the plaintiff gave testimony at an examination before trial. The plaintiff drove northbound just before the accident. The plaintiff stopped and waited to make a left turn into the plaintiff's driveway. As the plaintiff waited, the plaintiff felt a heavy impact to the rear of the car. When further questioned about what happened, the plaintiff testified the car when hit by another vehicle coming south pushed the plaintiff's car into the southbound traffic lanes. The plaintiff also testified that approximately ten seconds or less after the initial rear impact, the car driven by defendant Beagan J.Y. Gooth and owned by defendant Youngs Farm The Annex, Inc. traveling in the opposite direction in the southbound traffic lanes struck the plaintiff's car.

On December 11, 1998, the defendant Beagan Gooth gave testimony at an examination before trial. The defendant was traveling on Glen Cove Avenue as three or four cars passed this defendant traveling in the opposite lanes. The defendant Beagan Gooth testified that minutes before the accident happened, he noticed a white car with its left turn signal light on as the defendant continued traveling straight. The defendant observed the plaintiff's car in his lane for approximately six seconds prior to his impact with it. The defendant also testified when the white car came into his lane. The defendant swerved right to elude the car, but got struck by the plaintiff's car in the rear driver side door of his car which slammed into a telephone pole.

The defendants claim the plaintiff's testimony establishes that there was virtually no time between the two collisions. The defendants contend that because of the limited time lapse neither driver could have avoided the accident. The defendants assert by the plaintiff's own testimony this accident was not the result of any negligence by these defendants, but instead the plaintiff's entry into the defendant's opposing lane of traffic was an unavoidable, sudden and unanticipated occurrence. The defendants theorize that the collision between the parties resulted from a third vehicle striking the rear of the plaintiff's car and pushing the plaintiff's car into the path of approaching traffic.

The Court's role on a motion for summary judgment is to determine whether there is a material fact issue to be tried, not to resolve it (*Sillman v. Twentieth Century-Fox*

Film Corp., 3 NY2d 395). A summary judgment motion should be granted only if the movant is entitled to judgment as a matter of law (*see, Ugarriza v. Schmieder*, 46 NY2d 471). It is well-settled that personal injury cases do not lend themselves to resolution by summary judgment. Such a remedy is appropriate only where the negligence or lack of it is established as a matter of law (*Khahales v. Garber*, 195 AD2d 585). The question of whether a person's conduct amounts to negligence is inherently a question for the trier of fact in all but the most egregious instances (*Johannsdottir v. Kohn*, 90 AD2d 842). Whether the accident could have been avoided is an issue of fact to be determined by the trier of fact. Here, the fact finder should evaluate the potential witness testimony about the actions and observations of the witnesses about the incident.

Accordingly, the defendants' motion for summary judgment is denied. Order filed.

Dated: JAN 17 2001

ENTER:



J. S. C.

ENTERED

JAN 23 2001

**NASSAU COUNTY
COUNTY CLERKS OFFICE**