

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

NINA BRODIE,

Plaintiff,

-against-

DAVID STEEL,

Defendant.

TRIAL/IAS, PART 10
NASSAU COUNTY

MOTION DATE:
July 3, 2001
INDEX No. 28180/99

SEQUENCE No. 2

The following papers read on this motion:

- Notice of Motion and Supporting Papers
- Affirmation in Opposition
- Reply Affirmation

Motion by plaintiff for an order pursuant to CPLR 3212 granting her partial summary judgment on the issue of liability is denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff in a motor vehicle accident on August 31, 1999. The accident occurred at or near the intersection of Helen Street and Glen Cove Road in the Town of North Hempstead.

Plaintiff moves for summary judgment on the grounds that it is uncontroverted that defendant operated his vehicle in a negligent manner by crossing over two double yellow lines, a safety zone, and traveling in the opposite direction of intended traffic. Plaintiff further alleges that defendant's vehicle collided with her vehicle.

At his examination before trial, defendant testified, *inter alia*, that plaintiff's vehicle swerved into the right hand lane (page 27) just before her vehicle hit his car in the rear and drove his car into the curb. (Page 41). Defendant, therefore, maintains that plaintiff contributed to the accident.

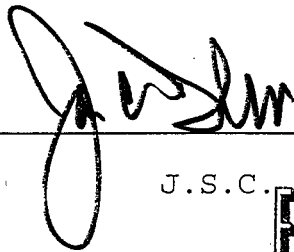
On a motion for summary judgment, the burden is on the movant to make a *prima facie* showing that he or she is entitled to summary judgment as a matter of law. (Zuckerman v City of New York, 49 NY2d 557, 562; Friends of Animals, Inc. v Associated Fur Mfrs., Inc., 46 NY2d 1065, 1067). A failure to make that showing requires the denial of the motion even where the opposing papers are insufficient. (Ayotte v Gervasio, 81 NY2d 1062, 1063; Avon Electrical Supplies, Inc., v Baywood Electric Corporation, 200 AD2d 697, 698).

Generally, negligence actions do not normally lend themselves to resolution by summary judgment (Ugarizza v Schmieder, 46 NY2d 471, 474) unless the facts clearly point to the negligence of one party without any fault or culpable conduct on the part of the other (see, Lazar v Fea Leasing, 264 AD2d 818). Indeed, a plaintiff in a negligence action will only be awarded summary judgment in cases where there is no conflict at all in the

evidence, the defendant's conduct fell far below any permissible standard of care, and the plaintiff's conduct was of exemplary prudence under the circumstances. (Kutanovski v DeCicco, 122 AD2d 250, 251; Ugarriza v Schmieder, supra).

Viewing the evidence in the light most favorable to defendant herein, and affording him the benefit of every personable inference (Benincasa v Garrubbo, 141 AD2d 636; Robinson v Strong Memorial Hospital, 98 AD2d 976), plaintiff has failed to make a prima facie showing that defendant's conduct was the sole precipitating cause of the subject accident. Plaintiff has not demonstrated what, if anything, she did to avoid or minimize the happening of the accident. Further, questions concerning the manner in which the accident happened and the reasonableness of the parties' conduct have been raised. A plenary trial is necessary to resolve these issues of fact. (See, Kutanovski v DeCicco, supra).

Accordingly, plaintiff's motion for partial summary judgment on the issue of liability is denied.



J.S.C.

ENTERED

Dated: September 10, 2001

SEP 17 2001

**NASSAU COUNTY
COUNTY CLERKS OFFICE**