

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. RALPH P. FRANCO, Justice

TRIAL/IAS, PART 11

PAUL P. COPPOLA, JR, and ANGELA L. COPPOLA,

Plaintiff(s),

INDEX No.: 3515/02

-against-

MOTION SEQ. 3

STEVE & SONS, INC., ROBERT L. LEMAIRE, TWO BROTHERS LEASING INC., and ROBERT L. FONTAINE,

Defendant(s).

The following papers read on this motion:

Notice of Motion/ Order to Show Cause....._____

Answering Affidavits....._____

Replying Affidavits....._____

Motion for an Order granting defendants Two Brothers Leasing, Inc., and Greg Fontaine , Robert L. Fontaine summary judgment against plaintiffs Paul P. Coppola and Angela Coppola and dismissing the complaint and all cross-claims against the moving defendants is granted.

Plaintiff Paul and Angela Coppola have not opposed the within summary judgment motion.

Plaintiff alleges his vehicle was rear-ended by the vehicle owned by Steve & Sons and operated by Robert LeMaire. As a result plaintiff claims he was then pushed into the vehicle owned by Two Brothers and operated by Fontaine. At his deposition Fontaine testified that he was slowing to a stop in traffic when he felt the contact from behind. Fontaine indicated that the accident happened while he was stopped in traffic or “very close to it”. (Fontaine EBT, pg 16, 55).

A rear-end collision with a stopped vehicle establishes a **prima facie** case of negligence on the part of the operator of the second vehicle. See **Agramonte v. City of New York**, 732 A.D.2d 414 and **Johnson v. Phillips**, 261 A.D.2d 269. In all of his pleadings, Mr. Coppola alleges that his vehicle was rear-ended by the LeMaire vehicle, which caused him to strike the Fontaine vehicle. (EBT of plaintiff Paul Coppola pg 44,48-49; 135-135.

Although there are issues between plaintiff and co-defendants over who made the first contact, there are no issues of fact with respect to the absence of liability on the part of Two Brothers and Fontaine.

Summary judgment is granted to defendants Two Brothers Leasing, Inc. and Greg Fontaine and dismissing plaintiff's complaint and the cross claims of defendants Steve Sons, Inc. and Robert L. LeMaire.

Two Brothers Leasing, Inc. and Robert L. Fontaine shall be deleted as party defendants from the caption.

Dated: November 19, 2003

3515

HON. RALPH P. FRANCO

Hon. Ralph P. Franco, J. S. C.

ENTERED

NOV 21 2003

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**