

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

.....
EUN SOOK KIM,

Plaintiff,

- against -

Action No. 1
Index #8338/07
Sequence #002
Part 40

JOHN J. SZVETICS, JOANNE SZVETICS,
NETTY S. VELEZ and DANIELLE L. RICHARDS,

12/22/2008

.....
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

.....
DANIELLE RICHARDS,

Plaintiff,

- against -

Action No. 2
012527/07

JOANNE SZVETICS, JOHN SZVETICS
and EUN KIM, Defendants.

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Notice of Motion.....	1
Affirmation In Opposition.....	2
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Upon the forgoing papers, defendants Netty Velez and Danielle Richards motion for summary judgment pursuant to CPLR §3212 on the issue of liability is determined as follows:

This personal injury action involves a chain-reaction automobile collision that occurred at a red traffic light. At first blush it appears that the evidence of how the multiple vehicle accident took place is in dispute; however, certain facts can be resolved without resorting to speculation.

This was a four vehicle accident.

The operator of vehicle #4, Joanne Szvetics, admits that her brakes failed and she struck the vehicle in front of her that was stopped at a red light, thereby precipitating the accident. Movant and driver of vehicle #3, Danielle Richards, states hers was the vehicle that was struck from behind

by defendant Szvetics' SUV.

Although defendant Szvetics thought there were only three vehicles involved altogether and the automobile she struck belonged to plaintiff (possibly because the car she hit was a grey sedan and movant's vehicle was a silver sedan), the police report containing the diagram made by the officer at the scene indicates a total of four vehicles. Plaintiff's vehicle is noted as automobile #2 in the chain, movants' as #3 and defendant Szvetics' as #4.

As a result of the first rear -end impact, movant's vehicle #3 struck plaintiff, which in turn hit the non-party truck in front of it, designated as vehicle #1.

In any event, defendant Szvetics does not oppose the instant application by refuting movant's description of the events.

Plaintiff, however, does oppose the motion, proposing that her automobile was struck in the rear twice, thus arguing by inference that she was first struck by movant's vehicle and then again after the Szvetics' SUV hit movant's car which, as a result, collided with plaintiff's automobile a second time.

Nevertheless, plaintiff's deposition testimony submitted in support of her opposition is not definitive regarding these details.

It is undisputed that she was hit by movant defendant Richards' vehicle and then she struck the truck in front of her. Plaintiff was aware of that first contact to the rear of her automobile.

When asked if before the first contact with her automobile took place she heard a crash, plaintiff responded "yes." The next question, a *non-sequitor*, queries if that crash was the one with the truck that was in front of her, although it is not disputed that plaintiff's crash with vehicle #1 occurred after, not before her vehicle was rear-ended by movant. Confusion ensues.

Plaintiff even estimates there was one or two minutes between the collisions and that she "thinks" she was hit two or three times or perhaps four.

Consequently, plaintiff's testimony does not directly dispute that movant's vehicle was stopped before any collision took place, thereby creating a genuine material issue of fact.

This is not a question of assessing credibility which the Court may not do. Nevertheless, the creation of a semblance of an issue is insufficient to defeat a motion for summary judgment (see

*S.J. Capelin Assoc. v. Globe*, 34 NY2d 338; *Spoderk v. Park Property*, 263 AD2d 478, app. den. 94 NY2d 760).

Here, plaintiff's opposition invites the Court to speculate without a true showing that defendant Richards was at least, in part, negligent (*cf. Batista v. Rivera*, 5 AD3d 308). No factual issue has been raised in the Court's mind (see *Phillips v. Joseph Kantor & Co.*, 31 NY2d 307; *Falk v. Goodman*, 7 NY2d 87).

Accordingly, defendants Netty Velez and Danielle Richards' motion is granted and the complaint and all cross-claims against them are dismissed.

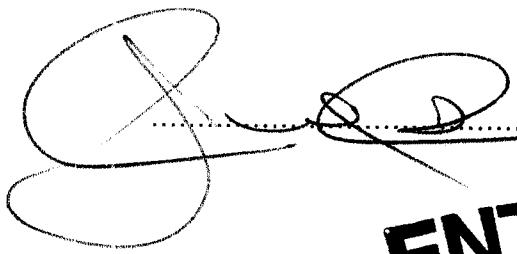
With respect to defendant Szvetics' SUV, defendant Richards has established a *prima facie* case that this was a rear-end collision with her stopped automobile and, as the operator of the rear most vehicle, defendant Szvetics is liable as a matter of law (*Smith v. Seskin*, 49 AD3d 628).

Consequently, movants are awarded partial judgment on liability against the Szvetics defendants under Action 2, Index Number 12527/07. Plaintiff is awarded partial judgment on liability against the Szvetics defendants as well. The complaint and any counterclaim against plaintiff is dismissed.

The only remaining actions are Kim v. John and Joanne Szvetics, Index Number 8338/07 and Richards vs. John and Joanne Szvetics under Index Number 12527/07 on the issue of damages (see *Evangelista v. Ward*, 308 AD2d 504).

These actions are ready for trial.

Dated: December 31, 2008

 \_\_\_\_\_ J.S.C.

**ENTERED**

JAN 08 2009

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**