

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU

Present: HON. ZELDA JONAS  
Justice

SUZANNE L. GAGLIARDI and  
MICHAEL M. GAGLIARDI,

Plaintiffs,

- against -

JANE COURTIEN,

Defendant.

TRIAL/IAS PART 25

Index No. 18460/01

Sequence No. 1

Motion Date: June 6, 2003

The following papers read on this motion:

Notice of Motion .....1  
Affirmation in Opposition .....2  
Reply Affirmation ..... 3

Motion by plaintiffs for an order pursuant to CPLR 3212 granting them partial summary judgment on the issue of liability is granted.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff, Suzanne Gagliardi, on May 18, 2000. Plaintiff testified that she was stopped for "maybe three seconds" (page 9 of EBT) before she was hit in the rear by defendant's vehicle.

It is well settled that a rear end collision with a stopped automobile creates a *prima facie* case of negligence on the part of the driver of the rear vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred

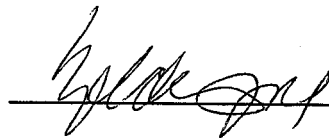
(*Valasquez v. Quijada*, 269 A.D.2d 592; *Diller v. City of New York Police Dep't*, 269 A.D.2d 143; *Cuthbert v. Pederson*, 266 A.D.2d 255). It is equally true that the failure of a defendant to maintain a safe distance between his/her vehicle and the plaintiff's vehicle, in the absence of an adequate explanation, constitutes negligence as a matter of law. (See, Vehicle & Traffic Law §1129(a); *Valasquez v. Quijada, supra*; *Zakutny v. Gomez*, 258 A.D.2d 521.)

In opposition, defendant has simply relied upon an attorney's affirmation which has no probative value (*Roche v. Hearst Corp.*, 53 N.Y.2d 767). In this vein, defendant has not offered any non-negligent explanation for the rear-end collision.

In view of the foregoing, plaintiffs' motion for summary judgment on the issue of liability is granted.

Dated:

7/23/03



J.S.C.

**ENTERED**

**JUL 28 2003**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**