

SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 19**

Scan

**PRESENT: HON. WILLIAM R. LaMARCA
Justice**

MARC SANDBERG,

**Motion Sequence # 001, # 002
Submitted January 8, 2007**

Plaintiff,

-against-

INDEX NO: 14636/05

**MAUREEN DONEGAN, IRIS Y. SAAVEDRA,
CARL A. MOSCHELLA, LEWIS OIL COMPANY,
INC., THOMAS J. RYAN, GNS TRUCKING
and THOMAS J. O'LEARY,**

Defendants.

The following papers were read on these motions:

Notice of Motion.....1
GNS TRUCKING and O'LEARY Affirmation in Opposition....2
MOSCHELLA Affirmation in Support.....3
LEWIS OIL and RYAN Affirmation in Opposition.....4
DONEGAN and SAAVERDA Cross-Motion.....5

Plaintiff, MARC SANDBERG (hereinafter referred to as "SANDBERG"), moves for an order, pursuant to CPLR §3212, granting partial summary judgment against the defendants and in favor of the plaintiff on the issue of liability. Defendants, GSN TRUCKING and THOMAS J. O'LEARY, oppose the motion on the ground that outstanding discovery remains on the issue of "serious injury", and defendants LEWIS OIL COMPANY, INC. and THOMAS J. RYAN partially oppose the motion on the ground that plaintiff's

motion should only be granted as to defendants, GSN TRUCKING and THOMAS J. O'LEARY, but not as to the remaining defendants. Defendant CARL A. MOSCHELLA supports the motion as against co-defendants, GSN TRUCKING and THOMAS J. O'LEARY, and defendants, MAUREEN DONEGAN and IRIS Y. SAAVERDA, cross-move for an order dismissing the complaint of plaintiff and all cross-claims against said defendants on the ground that plaintiff fails to state a cause of action. The motion and cross-motion are determined as follows:

This action arises out of a five-car automobile accident that occurred on the morning of May 19, 2003 when plaintiff was stopped in traffic on the westbound roadway of the Long Island Expressway, at or near the intersection with Round Swamp Road in Suffolk County, New York. It is alleged that when he was stopped, plaintiff saw the tractor trailer truck operated by defendant, THOMAS J. O'LEARY and owned by defendant, GSN TRUCKING, approach in his rear view mirror and strike the rear of his automobile with the front of the truck, with a heavy impact. He states that, as a result of that impact, plaintiff's vehicle was pushed forward into the stopped vehicle in front of him, causing a chain reaction involving all of the other defendants. The other defendants confirm these events and defendants, MAUREEN DONEGAN and IRIS Y. SAAVERDA, state in their cross-motion that MARC SANDBERG, after being hit in the rear by the truck operated by THOMAS J. O'LEARY and owned by GSN TRUCKING, made contact with the rear of the vehicle being driven by defendant, THOMAS J. RYAN and owned by LEWIS OIL COMPANY, INC., which made contact with the rear of the vehicle being operated by defendant, CARL A MOSCHELLA, causing that vehicle to make contact with the rear of the vehicle being operated by defendant, IRIS Y. SAAVERDA and owned by defendant,

MAUREEN DONEGAN. Defendants SAAVERDA and DONEGAN state that their vehicle was the first in line of this chain reaction collision, from which plaintiff MARC SANDBERG, alleges personal injuries.

In viewing motions for summary judgment, it is well settled that summary judgment is a drastic remedy which may only be granted where there is no clear triable issue of fact (see, *Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131, 320 NE2d 853 [C.A. 1974]; *Mosheyev v Pilevsky*, 283 AD2d 469, 725 NYS2d 206 [2nd Dept. 2001]. Indeed, “[e]ven the color of a triable issue, forecloses the remedy” *Rudnitsky v Robbins*, 191 AD2d 488, 594 NYS2d 354 [2nd Dept. 1993]). Moreover “[i]t is axiomatic that summary judgment requires issue finding rather than issue-determination and that resolution of issues of credibility is not appropriate” (*Greco v Posillico*, 290 AD2d 532, 736 NYS2d 418 [2nd Dept. 2002]; *Judice v DeAngelo*, 272 AD2d 583, 709 NYS2d 817 [2nd Dept. 2000]; see also *S.J. Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [C.A.1974]). Further, on a motion for summary judgment, the submissions of the opposing party’s pleadings must be accepted as true (see *Glover v City of New York*, 298 AD2d 428, 748 NYS2d 393 [2nd Dept. 2002]). As is often stated, the facts must be viewed in a light most favorable to the non-moving party. (See, *Mosheyev v Pilevsky*, *supra*).

Vehicle and Traffic Law §1129(a) directs that an operator of a vehicle is “under a duty to maintain a safe distance between his vehicle and the vehicle in front of him and his failure to do so, in the absence of an adequate, non-negligent explanation, constitutes negligence as a matter of law”. In such a scenario, a rear-end collision with a stopped vehicle established a *prima facie* case of negligence on the party of the operator of the

second vehicle (*Barlie v Lazzarini* 222 AD2d 635, 635 NYS2d 694 [2nd Dept. 1995]), and the front vehicle is entitled to summary judgment on liability against the offending vehicle unless there is a non-negligent explanation for the collision. See, *Leal v Wolff*, 224 AD2d 392, 638 NYS2d 110 (2nd Dept. 1996); see also, *Campanella v Moore and Ginzig*, 266 AD2d 423, 699 NYS2d 76 (2nd Dept. 1999); *Harris v Ryder*, 292 AD2d 499, 739 NYS2d 195 (2nd Dept. 2002).

Based upon the foregoing, it is the Court's judgment that plaintiff is entitled to judgment as a matter of law on the issue of liability as to defendants, GSN TRUCKING and THOMAS J. O'LEARY, as no question of fact has been raised to require a trial on said issue. However, as the plaintiff has not submitted proof of "serious injury" in admissible form, the Court grants judgment as to fault only as to said defendants, which does not include any finding that the plaintiff has satisfied the "threshold" serious injury requirements. *Shafareko v Fu Cheng*, 5 AD3d 484, 772 NYS2d 862 (2nd Dept. 2003); *Reid v Brown*, 308 AD2d 331, 764 NYS2d 260 (1st Dept. 2003).

Moreover, it is the judgment of the Court that defendants, MAUREEN DONEGAN and IRIS Y. SAAVERDA, are entitled to summary judgment on the cross-motion dismissing the complaint against them, as there has been no evidence presented to raise a question of fact as to whether said defendants were the proximate cause of the accident and they cannot be found negligent as a matter of law. Indeed, no opposition has been submitted in opposition to said defendants' cross-motion. Accordingly, it is hereby

ORDERED, that plaintiff's motion for partial summary judgment on the issue of liability is granted to the extent that judgment is granted as to the fault, only, of defendants,

GNS TRUCKING and THOMAS J. O'LEARY; and it is further

ORDERED, defendants cross-motion for an order dismissing the complaint against defendants, MAUREEN DONEGAN and IRIS Y. SAAVERDA, is granted, and the caption shall henceforth read as follows:

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

MARC SANDBERG,

Plaintiff,

-against-

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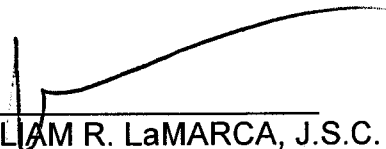
**CARL A. MOSCHELLA, LEWIS OIL COMPANY,
INC., THOMAS J. RYAN, GNS TRUCKING
and THOMAS J. O'LEARY,**

Defendants.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: March 30, 2007



WILLIAM R. LaMARCA, J.S.C.

ENTERED

APR 0 4 2007

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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