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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

LISA A. EWANTISKO,

TRIAL/IAS PART 15

Plaintiff(s),

INDEX NO. 19133/03

- against -

**MOTION SEQUENCE
NO. 1**

JOAO M. MENDES and CARMINE E. MANETTA,

**MOTION SUBMISSION
DATE: May 23, 2005**

Defendant(s).

The following papers read on this motion:

Notice of Motion

X

Affirmation in Opposition

X

Reply Affirmation

X

Upon the foregoing papers, the motion by the defendant Carmine E. Manetta for an Order pursuant to CPLR Rule 3212 granting summary judgment to defendant, Carmine A. Manetta, dismissing plaintiff's complaint and all cross-claims against him on the ground that the undisputed evidence on the record establishes that no liability for the occurrence of the accident on January 6, 2001 exists as against Carmine A. Manetta, and thus the complaint and the cross-claims asserted against him are dismissible as a matter of law, is determined as hereinafter provided:

This personal injury action arises out of a three car motor vehicle accident that occurred on January 6, 2001 at approximately 9:45 p.m. at the intersection of Old Country Road and Glen Cove Road, Carle Place, NY.

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in **Stewart Title Insurance Company, Inc. v. Equitable Land Services, Inc.**, 207 AD2d 880, 616 NYS2d 650, 651 (Second Dept., 1994):

"It is well established that a party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562,

427 N.Y.S.2d 595, 404 N.E.2d 718). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944), but once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York*, *supra*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718)."

A review of the respective submissions establishes that at the time of the accident in issue the motor vehicle driven by the co-defendant Joao M. Mendes was east bound on Old Country Road and making a left hand turn to head north on Glen Cove Road. The co-defendant Carmine E. Manetta's vehicle was in the west bound lane of Old Country Road on the eastern side of the intersection in the middle lane of traffic. The plaintiff's vehicle was in the right hand westbound lane of traffic to the right or north of the co-defendant Carmine E. Manetta. Both the plaintiff and co-defendant Carmine were stopped at the intersection due to a red light for the westbound traffic. The co-defendant Joao M. Mendes was in the process of making a left hand turn into the intersection when the light changed to green and the co-defendant Carmine E. Manetta and the plaintiff began to move into the intersection. The co-defendant Carmine E. Manetta set forth at his deposition that he observed the co-defendant Mendes' vehicle turning into the intersection and stopped his vehicle within five to eight feet of starting from the car's prior stop. The plaintiff proceeded into the intersection where the co-defendant Mendes' vehicle struck the front of the plaintiff's vehicle which caused the rear portion of the plaintiff's vehicle to strike the co-defendant Manetta's vehicle in the front right quarter panel.

The co-defendant Carmine Manetta in the instant application has made a prima facie showing of the absence of any material fact of negligence as to Carmine E. Manetta. In opposition, the plaintiff offers no evidence in admissible form to establish a material issue of fact as to the manner in which the accident occurred and advances conjecture by plaintiff's counsel which is insufficient to defeat the requested relief. The Court notes that the co-defendant Joan M. Mendes offers no opposition to the requested relief.

Based upon all of the foregoing, the co-defendant Carmine A. Manetta's application for an Order pursuant to CPLR Rule 3212 granting summary judgment to defendant, Carmine A. Manetta, dismissing plaintiff's complaint and all cross-claims against him on the ground that the undisputed evidence on the record establishes that no liability for the occurrence of the accident on January 6, 2001 exists as against Carmine A. Manetta, and thus the complaint and the cross-claims asserted against him are dismissible as a matter of law, is granted.

SO ORDERED.

DATED:

7/19/2005

Ray S. Skellon

J.S.C.

ENTERED

JUL 22 2005

NASSAU COUNTY
COUNTY CLERK'S OFFICE