

SCAW

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. ROY S. MAHON**

**Justice**

**MARLON JONES-GUMA,**

**Plaintiff(s),**

**- against -**

**ANTHONY M. ROTOLA, ANTHONY ROTOLA and  
JOHN C. BECK,**

**Defendant(s).**

**TRIAL/IAS PART 8**

**INDEX NO. 7561/04**

**MOTION SEQUENCE  
NO. 1 & 2**

**MOTION SUBMISSION  
DATE: April 27, 2009**

**The following papers read on this motion:**

<b>Notice of Motion</b>	<b>X</b>
<b>Notice of Cross Motion</b>	<b>X</b>
<b>Affirmation in Support</b>	<b>X</b>
<b>Affirmation in Opposition</b>	<b>X</b>
<b>Affirmation in Opposition and Reply</b>	<b>X</b>

Upon the foregoing papers, the motion by the defendant John C. Beck for an Order granting summary judgment in favor of defendant Beck, pursuant to CPLR 3212 and the cross motion by the plaintiff for an Order denying defendant Beck's motion for summary judgment in its entirety; granting plaintiff's cross motion for partial summary judgment on liability against all defendants upon the ground that there are no triable issues of fact and that as a matter of law, plaintiff is entitled to judgment on liability against each said defendant and upon granting partial summary judgment as aforesaid, setting this matter down for an assessment of damages pursuant to CPLR 3212(c), are both determined are hereinafter provided:

This personal injury action arises out of a two car motor vehicle accident that occurred on December 2, 2003 at approximately 5:55 pm. At that time, the plaintiff was a passenger in a car that was driven by the defendant Anthony M. Rotola that was in a collision with a vehicle driven by the defendant John C. Beck on Jericho Turnpike at or near the entrance to the Crest Hollow Country Club, Oyster Bay, New York.

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)."

The plaintiff in describing the accident in issue, set forth at the plaintiff's October 7, 2008 deposition:

"Q. When you got into the vehicle where did you get in, what sat?

A. The front passenger seat

Q. Were you wearing your seat belt?

A. Yes.

Q. While you were traveling on Jericho Turnpike, was that the location that the club was located at that you were looking for; was it on Jericho Turnpike?

A. Yes.

Q. Did there come a point in time where you saw the club that you were intending to go?

A. Yes.

Q. Did Mr. Rotola see the club too?

A. It was the last minute, yes.

Q. Did he see it first or did you point it out to him, something else?

A. No, I didn't see it at first.

Q. Did he say anything when you saw the club?

A. Him or Marco, I'm not sure.

Q. What was said?

A. Like there it is right there. We were unable to make the turn.

Q. At that point in time which lane were you traveling in or Jericho Turnpike?

A. The right.

Q. Where was the club in relationship to where you were; was it on the left side of the road, the right side of the road?

A. On the westbound lane.

Q. On the left side of the road from where you were?

A. Left.

MR KAUFMAN: On the left you said.

Q. At that point in time what did Mr. Rotola do with respect to the operation of his car?

A. He made a right onto that side street and made a U-turn, about 100 feet into it. Then was rolling through the intersection.

MR. KAUFMAN: And –

MS. CHENERY: I'll get there.

MR. KAUFMAN: He made.

Q. -- to the intersection with Jericho Turnpike?  
A. Uh-huh.  
Q. Was there any kind of traffic control device there?  
A. There was a stop sign I seen.  
Q. From where you were stopped at the stop sign was the club - -  
MR. KAUFMAN: Stop. Objection  
Q. Did Mr. Rotola bring his vehicle to a stop at the stop sign?  
A. No.  
Q. What did he do when he approached the stop sign?  
A. He continued to roll through it.  
Q. Did you observe the stop sign when you were in front of it?  
A. Yes, I seen it.  
Q. Did you say anything to Mr. Rotola about there's a stop sign there?  
A. No.  
Q. From where you were on the side street, where was the club, was it directly across the street, more to the left -  
A. Directly across the street.  
Q. What the traffic conditions like on Jericho Turnpike that evening; was it light, medium, heavy?  
MR. KAUFMAN: If you remember.  
A. I don't remember.  
Q. What separated the two directions of travel?  
A. I believe painted lines.  
Q. In this area were there any turn lanes on Jericho Turnpike for either eastbound or westbound traffic?  
A. I don't remember.  
Q. At the time of the accident, was it light out, dark out, dusk?  
A. Dark.  
Q. Did Mr. Rotola have his headlights on?  
A. Yes.  
Q. As Mr. Rotola approached the stop sign on this side street, that speed was he traveling at?  
A. In between 10 and 20.  
Q. Do you recall whether he looked to his left or to his right before he entered Jericho Turnpike?  
A. No.  
Q. No, you didn't recall or no, he did not?  
A. I don't recall.  
Q. How many vehicles were involved in this accident?  
A. Two.  
Q. At any time before the contact occurred, did you ever see the other vehicle involved in the accident?  
A. Yes.  
Q. Where was it the first time you saw it?  
A. As soon as it was about to hit me.  
Q. Where was it on the roadway?  
A. When we were coming, we were driving directly across Jericho Turnpike, it was coming from my right.  
Q. Do you know what lane or lanes Mr. Rotola's vehicle was in when you first observed that other vehicle?

MR. KAUFMAN: Do you understand the question?

Q. Was it still in the eastbound lane, had it entered the westbound lane?

A. We had entered the westbound.

Q. What portion of the vehicle was in the westbound lane; all of it, part of it?

A. Of our vehicle?

Q. Yes.

A. I would say the front half.

Q. What speed was Mr. Rotola traveling at that point in time?

MR. KAUFMAN: If you know.

A. I really don't know, but it wasn't too fast.

Q. When you first saw the other vehicle, how far away from your vehicle was it?

A. I didn't have time to say anything.

MR. KAUFMAN: No, no, how far was it.

A. A few feet.

Q. Do you know what lane the other vehicle was traveling in when you first saw it?

A. No I don't.

Q. Did you hear any noises prior to seeing that vehicle, like screeching brakes or tires or a car horn?

A. No.

Q. When you saw that vehicle for the first time, did you say anything?

A. No, I wasn't able to.

Q. From the time that you first saw that vehicle until the impact occurred, how much time passed?

A. You mean from when I seen it to the impact?

Q. Yes.

A. Probably a second.

Q. How would you describe the impact; was it light, medium, heavy or something else?

A. Violent. Very heavy.

Q. When you first saw that other vehicle could you estimate the speed of that vehicle?

A. No, it was moving very fast.

Q. Do you know what the speed limit is on Jericho Turnpike in that area?

A. No.

Q. When you say "very fast", what would you approximate that to be?

A. 65,70.

Q. What portion of Mr. Rotola's vehicle was involved in the accident?

A. The passenger side door, front passenger side door.

Q. What parte of the other vehicle was involved in the impact?

A. The front, engine area.

MR. KAUFMAN: Front engine area he said.

Q. Was Mr. Rotola's vehicle moving or stopped when the impact occurred?

A. Moving

Q. Do you know what speed he was traveling at?

A. Not sure, it wasn't fast.

Q. Did his vehicle move at all as a result of the impact?

A. I was knocked unconscious.

Q. What is your last memory before you lost consciousness?

A. Headlights and impact, very heavy impact.

Q. Did anybody in the vehicle say anything just prior to this accident occurring?  
A. No.  
Q. What is your next recollection after you regained consciousness?  
A. The Jaws of Life with a firefighter looking over me and he was yelling that I'm conscious. I had a loud machine next to my head cutting something.  
Q. How did you leave the scene of the accident?  
A. From I believe -- I passed out again and I woke up and I seen propellers over me, a helicopter. I was laying down on something. I was completely tied down."

*see deposition transcript at pgs 8; 11-20*

The defendant Anthony M. Rotola in describing the accident in issue stated:

"Q. When was the first time you saw the Crest Hollow Country Club building prior to the accident.  
A. When I was driving.  
MR. KAUFMAN: Where? On where?  
THE WITNESS: On Jericho Turnpike.  
Q. When you first viewed it, were you still driving in the same direction you were going when you first exited off the 135?  
A. Yes.  
Q. And when you first viewed the country club, which of the two lanes were you in on Jericho Turnpike?  
A. The right lane.  
Q. When you first viewed the country club, where was it in relation to your vehicle?  
A. On the left.  
Q. When you say it was on the left, were there three lanes of traffic of Jericho Turnpike that would separate your vehicle and the country club the first time you viewed it?  
A. I believe there's two.  
Q. Were there also lanes of traffic on Jericho Turnpike proceeding in the opposite direction when you first saw the country club?  
A. I believe there's two this way and two this way (indicating).  
MR. KAUFMAN: Indicating --  
MS. HILL: -- indicating two lanes going this way and two lanes going the other way.  
Q. When you first viewed the country club, you were in the right lane of travel; is that correct?  
A. Yes.  
Q. And at that same time, was there a lane directly to your left --  
A. Yes.  
Q. -- proceeding in the same direction as you?  
A. Yes.  
Q. At that same time, were there two lanes that would be coming from the opposite direction?  
MR. KAUFMAN: On the other side of the line.  
THE WITNESS: Yes.  
Q. After you viewed the country club, did there come a time that you entered onto another street?

A. I don't understand the question. A street?  
MR. KAUFMAN: Did you enter onto a street?  
MS. CHENERY: Did you leave Jericho Turnpike to enter a street on your right?  
MS. CHENERY: It may not be a street.  
MR. KAUFMAN: Did you enter some place off Jericho Turnpike?  
THE WITNESS: Yes.  
MR. KAUFMAN: Was that to your right?  
THE WITNESS: Yes.  
MR. KAUFMAN: Do you know the name of the street?  
THE WITNESS: It was not a street.  
MR. KAUFMAN: It was not a street. If it was not a street, what was it?  
THE WITNESS: I believe it was a parking lot?  
MS. HILL: Thank you for that.  
Q. Now, the parking lot that was to the right-hand side was there any traffic control devices that would regulate the entrance or exit of that parking lot and Jericho Turnpike?  
A. I don't recall.  
Q. The area where you entered to the right, was it just an open parking lot or were there any stores in that area or something else?  
A. I don't recall.  
Q. Was it a paved parking lot or was it a dirt area or something else?  
A. I believe it was paved.  
Q. Where was the parking lot located in relation to the Crest Hollow Country Club?  
A. Directly across the street.  
Q. When you entered into the parking lot, what did you do?  
A. I turned around to go into the Crest Hollow Country Club.  
MR. KAUFMAN: Did you turn into the parking lot?  
THE WITNESS: I turned into the parking lot on the right-hand side of the road to then turned around to go into the Crest Hollow Country Club.  
MR. KAUFMAN: When you say you turned around in the parking lot, did you make a U-turn so you would be facing the Crest Hollow Country Club?  
THE WITNESS: I don't remember the exact turn I made, but, yes. Whatever turn I did make in the parking lot, I turned around and I proceeded to come back to Jericho Turnpike.  
MS. HILL: Do you want to keep going? You're doing a great job.  
MR. KAUFMAN: I'll do it.  
Q. When you say you started to turn, you intended to go toward the Crest Hollow Country Club; is that correct?  
A. Yes.  
Q. At that time, when you were in the parking lot, did you have to turn your vehicle in any direction? You turned to the right to get into the parking lot, is that correct?  
A. Yes.  
Q. When you were in the parking lot, did you turn to your left or any other direction in order to face the country club before you entered Jericho Turnpike?  
A. I don't recall the direction I turned, but yes.  
Q. So at that point, was it your intention to go across the lanes of Jericho Turnpike in order to enter the Crest Hollow Country Club?

A. I was on Jericho Turnpike I made the right. I don't recall which way I turned my car around and I proceeded to come up to the driveway. I stopped, looked across into the Crest Hollow Country Club.

Q. Any you would have proceeded to cross across the four lanes of Jericho Turnpike had you not been involved in the accident and you would have pulled straight into the country club; is that correct?

A. Correct.

Q. You said you looked to the left first?

A. I don't recall which way I looked first.

Q. Did you look to your left and then your right?

A. Yes.

Q. When you looked to your left and your right in any direction either to the left first or to the right first, did you see any vehicles traveling either from your left-hand side towards you or your right-hand side on the -- past the first two lanes?

A. No.

Q. Did you have a clear view of the entire roadway in both directions prior to the accident happening?

A. Yes.

Q. Did there come a time that you entered back onto Jericho Turnpike with the front of your vehicle in order to cross Jericho Turnpike from the parking lot?

A. I don't understand the question.

Q. I'll reword it. You were in the parking lot. You said you moved and you stopped before you entered Jericho Turnpike.

A. Yes.

Q. Was there any traffic sign, like a full stop or a light or anything like that before you entered back onto Jericho Turnpike?

A. I don't recall.

Q. Did there come a time when you proceeded across Jericho Turnpike toward the Crest Hollow Country Club?

A. Yes.

Q. How many lanes did the front of your car go before - - excuse me -- eventually as you were crossing, was there a collision between your vehicle and another vehicle?

A. Yes.

Q. How many lanes had you traveled across Jericho Turnpike before this accident occurred?

A. I do not recall.

Q. Do you know if before you got to the point where you turned right into the parking lot, do you know if there were any markings in the roadway, like double-yellow lines or single-yellow lines or anything like that separating the two respective lanes on each side of Jericho Turnpike?

A. I don't recall.

q. Eventually was there a collision as you were proceeding across Jericho Turnpike with your vehicle and another vehicle?

A. Yes.

Q. Which part of your vehicle and which part of the other vehicle came into contact with each other?

A. My right passenger's side directly in the middle between the passenger

doors and their front.

Q. Okay. At any time before the collision occurred, did you see the vehicle that came into contact with the right side of your vehicle?

A. No.

Q. Were your lights on at that time.

A. I do not - -

Q. - - Your headlights?

A. I do not recall.

Q. What was the weather condition at the time of the accident?

A. Fair.

Q. Fair, okay. Was it nighttime or daytime or dim or was it the evening or how would you describe it?

A. I don't remember.

Q. How would you describe the impact between the two respective motor vehicles? Light, moderate or heavy?

A. Heavy.

Q. Following the impact between the two vehicles, did your car move in any direction, left, right, forward?

A. I don't recall.

Q. Were you knocked unconscious - -

A. Yes.

Q. - - from this accident?

A. Yes."

*see deposition transcript of Anthony M. Rotola at pgs 26-36*

The defendant John C. Beck set forth at said defendant's examination before trial:

"Q. From the time you started traveling westbound on Jericho Turnpike up until the time of the accident, did you have to make any stops for any traffic control devices?

A. No.

Q. Did you make any stops where you pulled your vehicle into a shopping center or a parking lot or off the road?

A. No.

Q. What was your highest rate of speed from the time you first started heading westbound up until the time the accident occurred?

A. About forty miles an hour.

Q. Do you know that the speed limit is in this area?

A. Forty.

Q. How many vehicles were involved in this accident?

A. Two.

Q. At any time before the impact occurred, did you ever see the other vehicle that was involved in the accident with you?

A. The other vehicle was directly - - when I noticed the other vehicle, it was just about in my lane.

MS. HILL: So your answer is yes?

THE WITNESS: Yes.

MS. HILL: She's going to ask you that next question.

Q. When you say it was just about in your lane, which direction was the vehicle facing when you first saw it?



A. It was facing north.  
Q. Was it moving or stopped?  
A. Moving  
Q. So it was moving in a northbound direction?  
A. Yes.  
Q. Is there a traffic light where this accident occurred?  
A. No.  
Q. Is there an intersection where this accident occurred?  
A. There is the entrance to that catering hall on the north side.  
Q. Is there a traffic light at that entrance?  
A. No.  
Q. The first time that you saw the other vehicle, was it moving or stopped?  
A. Moving.  
MS. HILL: Note my objection. It was asked and answered,  
MS. CHENERY: I'm sorry.  
MR. KAUFMAN: It's okay.  
Q. Could you estimate the speed of the other vehicle when you first observed it?  
A. It was going fast. I would say thirty miles an hour.  
Q. From the time you first observed that vehicle until the contact occurred, how much time passed?  
A. A split second.  
Q. Were you eating or drinking or talking on a cell phone at the time of the accident?  
A. No.  
Q. Were you smoking in the vehicle?  
A. No.  
Q. Were you have any conversations with Patricia just prior to the accident occurring?  
A. No.  
Q. Was there anything that obstructed your view of the roadway in front of you?  
A. No.  
Q. Were there any distractions either on the roadway or within the vehicle just prior to this accident occurring?  
A. No.  
Q. When you first observed the other vehicle, what did you do with respect to the operation of your vehicle.  
A. I immediately stepped on my brake as quickly as I could.  
Q. What degree of pressure did you apply to the brakes?  
A. As much as I could, but there was no time.  
A. Did the vehicle slow down at all?  
MR. KAUFMAN: Which one?  
MS. CHENERY: His vehicle.  
A. There wasn't time.  
Q. Did it skid at all?  
A. No.  
Q. Did you hear any noises just prior to this accident occurring like screeching brakes or tires or a car horn?  
A. No.  
Q. Did you ever sound your horn prior to the impact occurring?

- A. No.
- Q. Did you steer your wheel in any manner just prior to the impact occurring?
- A. No.
- Q. Did either you or Patricia say anything just prior to the impact?
- A. No.
- Q. From the time you first saw that other vehicle until the impact occurred, how much distance did you travel?
- A. Perhaps a car length.
- Q. What do you estimate a car length to be?
- MS. HILL: If you can estimate in feet.
- A. About fifteen feet.
- Q. How would you describe the impact? Was it light, medium, heavy or something else?
- A. Heavy.
- Q. What portion of your vehicle was involved in the impact?
- A. The front of it.
- Q. Was it the direct front or more to the left or more to the right?
- A. Direct.
- Q. What portion of the other vehicle was involved in the impact?
- A. The passenger's side.
- Q. What portion of the passenger's side was involved in the impact? Was it the middle of the vehicle or more towards the front or more towards the rear?
- A. I would say front, front middle. Basically it was by the - - where the windshield post comes down to the door."

*see deposition transcript of John C. Beck at pgs 19-25*

A review of the foregoing establishes an issue of fact as to what the respective defendant drivers observed as to the other vehicle at the time of the accident on December 2, 2003 and the vehicles' respective speed. As such, the defendant John C. Beck's application for an Order granting summary judgment in favor of defendant Beck, pursuant to CPLR 3212, is denied. That portion of the plaintiff's application which seeks an Order denying defendant Beck's motion for summary judgment in its entirety, is granted.

While a review of the respective submissions establishes that the plaintiff passenger is free from any act of contributory negligence in the motor vehicle accident the Court based upon a review of the deposition transcripts with the submissions determined that there is an issue of fact for the jury as to the culpable conduct of either and/or both of the defendants in causing the plaintiff's injuries (supra). In light of this issue of fact, that branch of the plaintiff's application which seeks an Order granting plaintiff's cross motion for partial summary judgment on liability against all defendants upon the ground that there are no triable issues of fact and that as a matter of law, plaintiff is entitled to judgment on liability against each said defendant and upon granting partial summary judgment as to the plaintiff's motion for summary judgment on damages pursuant to CPLR 3212(c), is denied.

SO ORDERED

DATED: 6/23/2009

JUN 26 2009  
 NASSAU COUNTY  
 COUNTY CLERK'S OFFICE  
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 J.S.C.