

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

STEVEN ISCOWITZ,

Plaintiff(s),

- against -

**LUZIUS D. MULLER, IDEOPLASTOS, INC., and the
Estate of DAVID SOBEL, Deceased by the
Public Administrator,**

Defendant(s).

TRIAL/IAS PART 8

INDEX NO. 7573/03

**MOTION SEQUENCE
NO. 9 & 10**

**MOTION SUBMISSION
DATE: November 2, 2009**

The following papers read on this motion:

Notice of Motion	X
Notice of Cross Motion	X
Affirmation in Opposition	X
Reply Affirmation	X

Upon the foregoing papers, the motion by the defendants Luzius D. Muller, Ideoplastos, Inc. for an Order to be made and entered herein, pursuant to CPLR §3212, granting the defendants, Luzius D. Muller and Ideoplastos, Inc summary judgment and dismissing plaintiff's complaint and all cross-claims and the cross motion by the plaintiff for an Order pursuant to CPLR §3212 granting plaintiff summary judgment as against defendant Estate of David Sobel, Deceased by the Public Administrator, finding said defendant completely liable for the subject automobile accident and setting this matter down for an inquest or trial on the issue of plaintiff's damages forthwith, are both determined as hereinafter provided:

This personal injury action arises out of a rear-end collision that occurred on October 17, 2002 at approximately 12:50 pm on the Throgs Neck Bridge 1 mile north of the Clearview Expressway and 26th Avenue, Queens, New York. At the time of the alleged occurrence, the deceased defendant David Sobel was driving a vehicle which allegedly struck a vehicle driven by the defendant Luzius D. Muller owned by the defendant Ideoplastos, Inc. in the rear after which the vehicle driven by David Sobel struck the vehicle driver by the plaintiff in the rear. The vehicle driven by the defendant Muller did not hit the plaintiff's vehicle. Subsequent to the accident and unrelated to the occurrence, the defendant David Sobel died.

The Court observes that the plaintiff sets forth that the plaintiff does not oppose the defendants Luzius D. Muller and Ideoplastos, Inc. application and that the plaintiff "intends to file a Stipulation of Discontinuance" against said defendants.

In examining the issue of a rear-end collision, the Court in **Mandel v Benn**, ___AD3d___
___NYS2d___, 2009 WL 3766433 (Second Dept., 2009) stated:

"Further, " '[a] rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision' " (*Harrington v Kern*, 52 AD3d 473, 473, 859 NYS2d 480, quoting *Klopchin v Masri*, 45 AD3d 737, 737, 846 NYS2d 311; see *Allstate Ins. Co. v Liberty Lines Tr., Inc.*, 50 AD3d 712, 713, 855 NYS2d 599; *Kimyagarov v Nixon Taxi Corp.*, 45 AD3d 736, 736, 846 NYS2d 309), or by providing "a non-negligent reason for his failure to maintain a safe distance between his car and the lead car" (*Woodley v Ramirez*, 25 AD3d 451, 452, 810 NYS2d 125; see *Mullen v Rigor*, 8 AD3d 104, 778 NYS2d 168). The failure to do so entitles the parties in the stopped vehicle to summary judgment against the operator of the vehicle that rear-ended them (see *Allstate Ins. Co. v Liberty Lines Tr., Inc.*, 50 AD3d at 712, 855 NYS2d 599; *Morales v Morales*, 55 AD3d 306, 307, 864 NYS2d 30)."

Mandel v Benn, supra

The Court notes that while the respective moving defendants may not offer any admission made by the deceased defendant David Sobel as to the happening of the accident in issue pursuant to the Dead Man's Statute (see *CPLR §4519*), they may offer testimony as to the facts of the accident pursuant to said statute (also see *Practice Commentaries C4519:5 Vincent C. Alexander*). In support of the defendants Luzius D. Muller and Ideoplastos Inc's application, the defendant Luzius D. Muller by affidavit states:

- "1. I am one of the defendants in the above-captioned action. At the time of the subject accident, I was also the CEO of defendant, Ideoplastos, Inc., which is no longer in business.
2. This accident arise out of a three-vehicle accident that occurred on the Throgs Neck Bridge on October 17, 2002.
3. That I was the operator of one of the vehicles involved in this accident.
4. I was proceeding northbound on the Throgs Neck Bridge when my vehicle was struck in the rear by the vehicle owned and operated by co-defendant, David Sobel.
5. After my vehicle was struck in the rear, it was pushed to the right and came to rest next to the guardrail. Mr. Sobel's vehicle continued and struck plaintiff's vehicle.
6. At no time did any party of my vehicle come into contact with any part of the vehicle owned and operated by plaintiff, Steven Iscowitz.
7. As my vehicle was struck in the rear and as no part of my vehicle made contact with plaintiff's vehicle, I believe it is clear I am not liable for the happening of the subject accident. Therefore, I request the motion submitted by my counsel for summary judgment and a dismissal of the complaint as

against me and Ideoplastos, Inc., be granted in its entirety."

The plaintiff sets forth in the plaintiff's affidavit:

- "1. I am the plaintiff in the above-captioned case.
2. On October 17, 2002 at approximately 12:50 pm I was the operator of a motor vehicle involved in a three car accident.
3. All three vehicles were in the middle lane northbound on the Throgs Neck Bridge. There were no vehicles in front of me. I heard a loud crash from the rear and then felt a single heavy impact to the right rear of my car. The only vehicles behind me were the Ford Explorer driven by Mr. Sobel and the Volvo driven by Mr. Muller.
4. After the impact, all vehicles stopped and I saw the Sobel vehicle between mine and the Muller vehicle. I observed that my car had sustained rear- end property damage and as did the Muller vehicle."

In opposition to the respective requested relief, the defendant Estate of David Sobel, Deceased by the Public Administrator has offered no evidence in admissible form as to a non negligent reason for the accident in issue (see, **Mandel v Benn**, supra).

Based upon the foregoing, the defendants Luzius D. Muller and Ideoplastos Inc's application for an Order pursuant to CPLR §3212, granting the defendants, Luzius D. Muller and Ideoplastos, Inc summary judgment and dismissing plaintiff's complaint and the plaintiff's cross motion for an Order pursuant to CPLR §3212 granting plaintiff summary judgment as against defendant Estate of David Sobel, Deceased by the Public Administrator, finding said defendant completely liable for the subject automobile accident and setting this matter down for an inquest or trial on the issue of plaintiff's damages forthwith, are **both respectively granted**.

SO ORDERED.

DATED: *12/23/2009*

Ray S. Mahon
..... J.S.C.

ENTERED
JAN 06 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE