

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

DOUGLAS CASSO,

TRIAL/IAS PART 6

Plaintiff(s),

INDEX NO. 20773/09

- against -

MOTION SEQUENCE
NO. 1

ANA CATALAN, ERICK CATALAN, ERIC
LITTLEFIELD and JOSHUA LITTLEFIELD,

MOTION SUBMISSION
DATE: January 7, 2011

Defendant(s).

The following papers read on this motion:

Notice of Motion

X

Affirmation in Opposition

X

Upon the foregoing papers, the motion by the defendants Eric Littlefield and Joshua Littlefield, unopposed, for an Order directing summary judgment in favor of the defendants Eric Littlefield and Joshua Littlefield pursuant to CPLR §3212, is determined as hereinafter provided:

In its entirety, the Court in its prior Order dated March 3, 2011 set forth:

"This personal injury action arises out of a two car motor vehicle accident that occurred on March 5, 2009 at approximately 7:15 am at the intersection of Washington Avenue and Willow Street, Garden City, New York at that time, the plaintiff was a passenger in a car operated by the defendant Erick Catalan which was in a collision with a vehicle operated by the defendant Joshua Littlefield.

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 and in particular the deposition transcripts of the plaintiff and the respective defendants Erick Catalan and Joshua Littlefield create an issue of fact as to the facts and circumstances of the accident in issue. As such, the defendants Ana Catalan and Erick Catalan's application for an Order granting the defendants summary judgment pursuant to CPLR 3212 dismissing the complaint the basis that the defendant didn't breach any duty owed to the plaintiff, is denied.

In light of the foregoing and the issue of fact as to facts and circumstances of the accident, the plaintiff's application for an Order pursuant to CPLR 3212 directing summary judgment in favor of plaintiff and against defendants Eric Littlefield and Joshua Littlefield on the issue of liability and setting this matter down for an immediate assessment of damages, is denied."

Based upon the foregoing, the defendants Eric Littlefield and Joshua Littlefield's application for an Order directing summary judgment in favor of the defendants Eric Littlefield and Joshua Littlefield pursuant to CPLR §3212, is denied.

SO ORDERED.

DATED: 3/7/2011

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J.S.C.

ENTERED
MAR 15 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE