

SCAN

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. ROY S. MAHON**

**Justice**

**DAVID STRICKLAND, an infant by his mother  
and natural guardian, DEBORAH BANKS  
HARRIGAN and DEBORAH BANKS HARRIGAN,  
Individually,**

**Plaintiff(s),**

**- against -**

**PATRICK TIRINO, JR., SCOTT A. DITZEL,  
ANDY JANG and KWON O. JANG,**

**Defendant(s).**

**TRIAL/IAS PART 6**

**INDEX NO. 21778/09**

**MOTION SEQUENCE  
NO. 1 & 2 & 3**

**MOTION SUBMISSION  
DATE: July 13, 2011**

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

<b>Notice of Motion</b>	<b>XX</b>
<b>Notice of Cross Motion</b>	<b>X</b>
<b>Affirmation in Opposition</b>	<b>XX</b>
<b>Affirmation in Opposition to Cross Motion</b>	<b>X</b>
<b>Reply Affirmation</b>	<b>X</b>

Upon the foregoing papers, the motion by the plaintiffs for an Order pursuant to CPLR §3211 & §3212 granting summary judgment to the plaintiff on the Counterclaim, Deborah Banks Harrigan, dismissing the counter-claim asserted against the plaintiff Deborah Banks Harrigan on the ground that there are no triable issues of fact against this moving plaintiff on the counterclaim; the motion by the defendants Andy Jang and Kwon O. Jang for an Order granting the defendant(s), Kwan Jang, Andy Jang summary judgment pursuant to CPLR 3212 dismissing the complaint the basis that the defendant vehicle was stopped when it was struck in the rear and the cross-motion by the defendant Scott A. Ditzel for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendant, Scott A. Ditzel dismissing the Complaint of the plaintiffs, David Strickland, an infant by his mother and natural guardian, Deborah Banks Harrigan and Deborah Banks Harrigan, individually and any and all cross-claims as against said defendant on the grounds that no triable issues of material fact exit as to any negligence or liability on the part of defendant, Scott A. Ditzel for the happening of the subject accident and/or the plaintiffs' alleged injuries, are determined as hereinafter provided:

This personal injury action arises out of a four car accident that allegedly occurred on October 26, 2006 eastbound on Southern State Parkway approximately three miles east of Exit 25S, Newbridge Road

exit. The vehicle driven by the plaintiff Deborah Banks Harrigan in which the plaintiff David Strickland was a passenger was first in line followed by the vehicle driven by the defendant Kwon O. Jang owned by the defendant Andy Jang, then the vehicle driven by defendant Scott A. Ditzel and the vehicle driven by the defendant Patrick Tirino.

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 Court observes that a review of the respective deposition transcripts of the defendants Kwon O. Jang and Scott A. Ditzel set forth that their respective vehicles were stopped at the time that the defendant Patrick Tirino struck the rear of the Ditzel vehicle causing a chain reaction collision resulting in the plaintiffs' vehicle being struck. While the defendant Kwon O. Jang set forth that the plaintiffs' vehicle was stopped when she hit the vehicle driven by the plaintiff Deborah Banks Harrigan, Ms. Harrigan set forth at her July 28, 2010 deposition:

"Q. Well, for one mile prior to the happening of the accident, had you traveled in the left-hand lane exclusively?

A. We were in the left lane most of the time.

Q. Okay

The question was: For the mile before the happening of the accident, were you traveling in the left-hand travel lane of the Southern State Parkway exclusively?

A. Yes. Uh-huh.

Q. Now, did there come a time that you felt an impact to your vehicle in this accident?

A. Yes.

Q. At the moment that you felt the impact to the rear of your vehicle, was your vehicle stopped or moving?

A. Moving.

Q. By the way, what was your highest rate of speed on the Southern State Parkway on the date of the accident prior to the happening of the incident?

A. The highest?

Q. Yes, highest rate of speed.

A. I would say maybe fifty-five, sixty, maybe."

*see deposition transcript of Deborah Banks Harrigan at pgs 71-72*

Based upon the foregoing, there is an issue of fact as to the events and circumstances of the accident in issue. As such, the application by the plaintiffs for an Order pursuant to CPLR §3211 & §3212 granting summary judgment to the plaintiff on the Counterclaim, Deborah Banks Harrigan, dismissing the counter-claim asserted against the plaintiff Deborah Banks Harrigan on the ground that there are no triable issues of fact against this moving plaintiff on the counterclaim; the motion by the defendants Andy Jang and Kwon O. Jang for an Order granting the defendant(s), Kwan Jang, Andy Jang summary judgment pursuant to CPLR 3212 dismissing the complaint the basis that the defendant vehicle was stopped when it was struck in the rear and the motion by the defendant Scott A. Ditzel for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendant, Scott A. Ditzel dismissing the Complaint of the plaintiffs, David Strickland, an infant by his mother and natural guardian, Deborah Banks Harrigan and Deborah Banks Harrigan, individually and any and all cross-claims as against said defendant on the grounds that no triable issues of material fact exist as to any negligence or liability on the part of defendant, Scott A. Ditzel for the happening of the subject accident and/or the plaintiffs' alleged injuries, are all respectively denied.

SO ORDERED.

DATED:

9/22/2011

  
..... J.S.C.

**ENTERED**

SEP 26 2011

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**