

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU**

Present:

HON. BERNARD F. McCAFFREY

Justice

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TRIAL/IAS, PART 1  
NASSAU COUNTY

DANIELLE PLUCK,

ACTION NO. I

Plaintiff,

INDEX NO. 18455/96

-against-

MOTION SUBMISSION  
DATE: 9/7/01

NAUSHAD ISLAM,

MOTION NO. 3

Defendant.

\_\_\_\_\_

DANIELLE PLUCK,

ACTION NO. II

Plaintiff,

INDEX NO. 18456/96

-against-

JASON DURSO and ROBERT DURSO,

Defendants.

\_\_\_\_\_

Plaintiff's applications to consolidate the above captioned actions for purposes of a joint trial (CPLR §602) and summary judgment as to the issue of liability in each case (CPLR 3212) are determined as hereinafter provided.

Plaintiff was involved in separate (5/10/95 and 7/9/95) motor vehicle accidents with the respective defendants and now seeks to consolidate the subsequent actions for purpose of a joint trial (CPLR §602). Summary judgment as to the issue of liability is also sought in each case (CPLR 3212). Each action is presently on the trial (C.C.P.1) calendar.

More specifically, on 3/1/00 plaintiff testified, inter alia, that on 5/10/95 (index number 18456/96) she was driving a friend (Francine Schimanski) home from Nassau Community College (p. 29, ls. 6-25). They were traveling eastbound on Hempstead Turnpike at approximately 11:00 pm and “[i]t was pouring” (p. 30, l. 17). After plaintiff had stopped at a red light at the intersection of Cedar Drive and Hempstead Turnpike (p. 31, ls. 4-16) for approximately a minute (p. 32, l. 6), defendant Robert Durso’s vehicle, permissively operated by defendant Jason Durso, reportedly “rear ended” plaintiff’s vehicle twice (p. 31, l. 2).

Conversely, Mr. Durso testified, in pertinent part, that a tractor-trailer merged off of an intersecting highway (Seaford-Oyster Bay Expressway) onto Hempstead Turnpike headed eastbound (p. 8, ls. 18-25). Although both his vehicle and plaintiff’s were in the center lane, “the other car in front of me, I assume, I guess got scared because the truck was merging on, and stopped suddenly in the road and I slid into her car” (p. 9, ls. 3-5). Her vehicle was reportedly “coming to a stop” at the time of impact (p. 9, l. 11) and the traffic light was allegedly green (p. 12, l. 21 - p. 13, l. 3). He observed the brake lights of plaintiff’s vehicle about two car lengths away (p. 14, l. 9), stepped on his brakes “pretty hard” (p. 14, l. 20) but the front of his vehicle allegedly slid into the rear of plaintiff’s car (p. 14, l. 14-p. 15, l. 2). He recalled only a single impact (p. 15, l. 4).

While, as a general rule, a rear-end collision creates a prima facie case of liability, the parties disparate testimony as to, inter alia, whether plaintiff’s vehicle came to a sudden stop in the center lane (while a truck purportedly merged onto the right lane), the color of the light; and the number of impacts is sufficient to preclude summary relief as to the issue of liability (Rosa vs. Colonial Transit, Inc., 276 AD2d 781, 715 NYS2d 426 [2d Dept., 2000]; Mundo vs. City of Yonkers, 249 AD2d 522, 672 NYS2d 128 [2d Dept., 1998]).

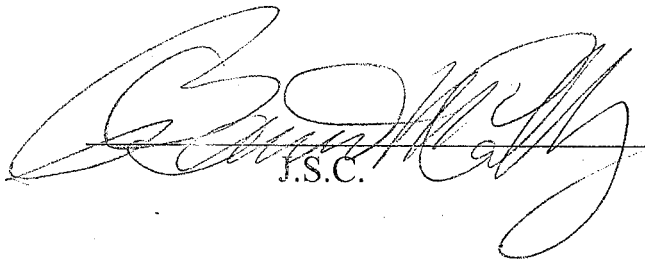
Alternatively, plaintiff’s uncontradicted 3/15/00 testimony (defendant Islam was not deposed) in the other action (18455/96) was that on 7/9/95 she was exiting a parking garage at the Green Acres Shopping Mall (p. 24, l. 12) and when she was “about three feet” (p. 24, l. 17) away her vehicle was struck on the right side by defendant’s vehicle which had failed to yield for a stop sign (p. 33, l. 11 - p. 34, l. 19). There was allegedly no traffic control device facing plaintiff (p. 26, l. 21).

Accordingly, plaintiff's unopposed application, pursuant to CPLR 3212, for an award of summary judgment as to the issue of liability in action number one (18455/96) is granted and her comparable request for summary relief in action number two (index number 18456/96) is denied.

Plaintiff's related request, to consolidate the actions for purposes of a joint trial, is therefore denied with leave to renew, if appropriate, following a determination as to liability in action number two (index number 18456/96). Plaintiff's mere participation in two distinct and unrelated motor vehicle accidents does not warrant consolidation (McGee vs. Cataldi, 169 AD2d 822, 565 NYS2d 728 [2d Dept., 1991]).

Plaintiff is directed to serve a copy of this order upon defendants.

Dated: SEP 12 2001

  
J.S.C.

**ENTERED**

**SEP 19 2001**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**