

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

JOSEPH ROSANO,

Plaintiff(s),

INDEX No. 7901/03

-against-

MOTION DATE: 3/30/04

DAVE MARMUREK & RALLYE LEASING INC.,

Defendant(s).

MOTION SEQ. No. 2-MG

The following papers read on this motion:

Notice of Motion/Affirmation/Affidavit/Attachments

Plaintiff seeks an Order granting him summary judgment on the issue of liability. Defendant opposes.

This action arises out of a single car automobile accident occurring on March 21, 2003. Plaintiff provides an affidavit wherein he states that he was a passenger in the automobile owned and operated by the defendants. He states that MARMUREK was operating the vehicle in the rain on the Garden State Parkway, when he lost control, striking a tree. Plaintiff suffered a laceration to his forehead requiring plastic surgery. Plaintiff contends that he is entitled to summary judgment on the issue of liability.

Counsel for the defendant opposes contending that there may be a question of whether the defendant was acting responsibly in an emergency situation. There is no affidavit by any person with first hand knowledge of the facts supporting that argument. Thus on the merits, the opposition fails to raise a triable issue of fact. Further, in the interests of justice, the Court accepts the copies of the pleadings, provided only in reply, curing any procedural defect in the initial application. Finally, although counsel contends that the application is premature, the defendant fails to identify any item of discovery, in plaintiff's possession, needed to oppose the application. CPLR § 3212(f). Thus, that argument is also found to be without merit.

Based on the proof and arguments presented, plaintiff's motion is Granted.

It is, SO ORDERED.

Dated: Apr. 7, 2004


HON. GEOFFREY J. O'CONNELL, J.S.C.

ENTERED
APR 15 2004
NASSAU COUNTY
COUNTY CLERK'S OFFICE