

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 15

NANCY R. SALAZAR,

INDEX NO. 8856/05

Plaintiff,

-against-

MOTION DATE: 10/11/06

SEQUENCE NO. 001

MICHAEL P. DUBEAU and PETER JAMES
DUBEAU,

Defendants.

-----X

Notice of Motion, Affs. & Exs.....	<u>1</u>
Affirmation In Opposition & Exs.....	<u>2</u>
Reply Affirmation & Exs.....	<u>3</u>

Upon the foregoing papers, it is ordered that the motion by plaintiff for an order granting summary judgment pursuant to CPLR 3212 against defendants on the issue of liability is granted.

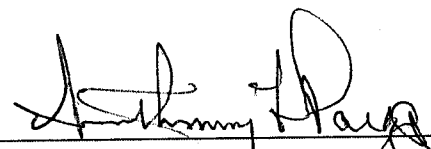
In this action plaintiff seeks to recover damages for injuries allegedly sustained in a 2-car accident on December 15, 2004 in Valley Stream, N.Y. Plaintiff's car was struck in the rear by a car owned by defendant Michael Dubeau and operated by Peter James Dubeau.

A rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred. The operator of the moving vehicle is required to rebut the inference of negligence created

by an unexplained rear-end collision, and if he or she cannot do so, the plaintiff may properly be awarded judgment as a matter of law (*Leal v. Wolff*, 224 AD2d 392 (2nd Dept. 1996)).

However, defendants in response to this motion only submitted an affirmation of counsel. CPLR 3212(b) provides that a summary judgment motion "shall be supported by affidavit" of a person "having knowledge of the facts" as well as other admissible evidence. The submission of an affirmation by counsel alone does not satisfy this requirement (*Zuckerman v. City of New York*, 49 NY2d 557 (1980)).

Dated: December 12, 2006.



Anthony L. Parga, J.S.C.

ENTERED

DEC 15 2006

NASSAU COUNTY
COUNTY CLERK'S OFFICE