

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X **PART 11**

**JOHN J. CAMPOLETTANO, JR., Executor
of a Last Will and Testament of JOHN J.
CAMPOLETTANO, SR., and RACHEL
CAMPOLETTANO,**

INDEX NO. 498/07

Plaintiff,

-against-

**MOTION DATE: 7/9/08
SEQUENCE NO. 001**

**ASHLEY B. ANNIBEL and DEBRA J.
ANNIBEL,**

Defendants.

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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 defendant for an order granting summary judgment dismissing the Complaint is denied.

In this wrongful death action, plaintiffs seek damages for injuries allegedly sustained in a two-car, intersection accident in Hicksville, N.Y. on April 16, 2006. Plaintiff John J. Campolettano, Sr. died at the hospital three hours after the accident in which he was the owner and operator of a car and defendant Debra Annibel owned and Ashley Annibel operated the other car.

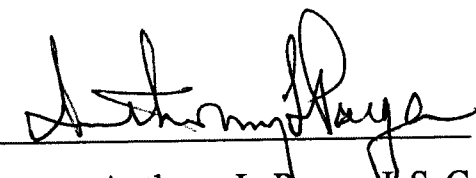
In support of this application, defendants refer to the sworn testimony of defendant operator Ashley Annibel indicating that she had a green light as she entered

the intersection and the front of her car hit the driver's door of plaintiff, John J. Campolettano, Sr.'s car.

In opposition plaintiffs refer to the sworn affidavit of private investigator, David Boriskin who measured the accident intersection. Boriskin concludes that the measurements indicate that at the impact point plaintiff traveled 43' 6" into the intersection and defendant should have seen plaintiff's car and avoided the collision. Plaintiffs conclude that: "the defendant had a clear and unobstructed view of the intersection from a distance of 200 feet before her vehicle reached the intersection . . . that plaintiff's vehicle crossed the right travel lane (a distance of 43 feet 6 inches) before entering the left lane on Rte 106 where he accident occurred. . . .defendant never observed plaintiff's vehicle enter Rte 106, cross the right thru travel lane and that she kept her foot on the gas and took no evasive action to avoid contact." Plaintiffs also argue that defendant Ashley Annibel's sworn testimony indicates that she did not exercise "due care necessary and failed to observe traffic conditions".

Plaintiffs have met their burden of demonstrating questions of fact with respect to liability in this action.

Dated: August 27, 2008.



Anthony L. Parga, J. S. C.

ENTERED

AUG 29 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**