

SCAN

SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

TRIAL/IAS, PART 5  
NASSAU COUNTY

\_\_\_\_\_  
WESLEY BRISSEAU,

Plaintiff,

-against-

RAYMOND LAROCHE,

Defendant.

INDEX NO.: 018461/08  
MOTION SEQ. NO.: 001

MOTION DATE: 4/15/10

The following papers read on this motion (numbered 1-4):

Notice of Motion.....	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3
Response Affirmation.....	4

The motion by defendant RAYMOND LAROCHE for summary judgment pursuant to CPLR §3212 is determined as follows.

Plaintiff WESLEY BRISSEAU, age 54, alleges that on October 31, 2007 at approximately 9:25 p.m., he was a passenger in a vehicle owned and operated by defendant RAYMOND LAROCHE, when said vehicle was allegedly hit in the rear by an unknown vehicle which left the scene of the accident. The accident occurred on Utica and Church Avenue in front of 819 Utica Avenue, in Kings County. Defendant moves (1) for an order dismissing plaintiff's complaint pursuant to CPLR §3212 on the issue of liability; or, in the alternative, (2) for an order dismissing plaintiff's complaint pursuant to CPLR §3212 on grounds that plaintiff failed to sustain a "serious injury" within the meaning of Insurance Law §5102(d).

In support of his motion, defendant submits the September 17, 2009 deposition testimony of plaintiff and defendant. Defendant testified at his deposition that after he stopped his vehicle at a red light, he saw a dark green van in his rearview mirror "coming full speed" toward his vehicle which subsequently hit his vehicle causing it to touch a car in front of him (Defendant's deposition testimony, pp. 14-17). Defendant testified further that after the impact, the driver of the van motioned to defendant to pull over but after defendant did so, the unknown vehicle left the scene of the accident and made a right turn at the intersection

(Defendant's deposition testimony, pp. 17-18). Plaintiff testified at his deposition that defendant's vehicle was stopped at a red light and that the impact with the unknown vehicle caused damage to the rear of defendant's car (Plaintiff's deposition testimony, pp.14, 19-20).

A rear-end collision with a stopped vehicle establishes a *prima facie* case of negligence on the part of the operator of the moving vehicle, and imposes a duty on him or her to explain how the accident occurred. If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence with a nonnegligent explanation, the driver of the lead vehicle may properly be awarded judgment as a matter of law. **Carman v. Arthur J. Edwards Mason Contracting Co., Inc.**, 71 AD3d 813; **Ortiz v. Fage USA Corp.**, 69 AD3d 914; **Faul v. Reilly**, 29 AD3d 626; **Ditrapani v. Marciante**, 10 AD3d 628; **Dileo v. Greenstein**, 281 AD2d 586; **Tricoli v. Malik**, 268 AD2d 469; **Mascitti v. Greene**; 250 AD2d 821; **Leal v. Wolff**, 224 AD2d 392; **Gambino v. City of New York**, 205 AD2d 583.

The Court finds that defendant has established *prima facie* his entitlement to judgment as a matter of law based on his deposition testimony that he was stopped at a red light when he was hit by a vehicle behind him. In this case, the moving vehicle, being unknown, has failed to rebut this *prima facie* showing by coming forth with a nonnegligent explanation for the accident. Plaintiff's deposition testimony supports defendant's version of the events and, plaintiff has failed to submit opposition to that portion of defendant's motion seeking summary judgment on the issue of liability.

Having found that defendant has established *prima facie* that he was not negligent, the Court need not reach the alternative grounds of defendant's motion for summary judgment which alleges that plaintiff failed to demonstrate that he suffered a serious injury within the meaning of **Insurance Law §5102(d)** as a result of the accident. Accordingly, it is

ORDERED, that defendant's motion for summary judgment pursuant to **CPLR §3212** dismissing plaintiff's complaint on the issue of liability is **granted**; and it is further

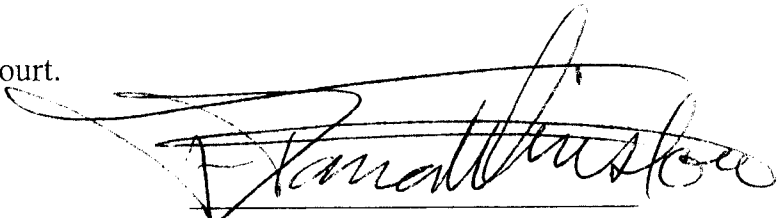
ORDERED, that defendant's motion for summary judgment pursuant to **CPLR §3212** on grounds that plaintiff failed to demonstrate that he suffered a serious injury within the meaning of **Insurance Law §5102(d)** as a result of the accident is **denied** as academic.

This constitutes the Order of the Court.

Dated:

6/14

, 2010



J.S.C.

**ENTERED**

JUL 19 2010

NASSAU COUNTY  
COUNTY CLERK'S OFFICE