

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

.....
ELISSA WARANTZ and LAURA ALLEN,
as co-executrices of the goods, chattels,
and credits of SYLVIA P. WARANTZ, deceased,

Plaintiffs,

Index No.008418/01
Sequence #001
Part 43

- against -

KEITH LOWERRE and LJA DISTRIBUTORS,
Defendants.

4/9/2003

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|--------------------------------|---|
| Notice of Motion..... | 1 |
| Affirmation In Opposition..... | 2 |
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At the outset, addressing plaintiff's timeliness objection pursuant to CPLR §3212(a), since defendant's motion was at most seven days post the cut-off date and defendants in their reply affirmation demonstrate good cause, the Court will address defendant's motion for summary judgment on the issue of liability pursuant to CPLR §3212(b) on the grounds that defendants were negligent as a matter of law.

Defendant's application is denied.

This action involves a motor vehicle accident which occurred on March 26, 2001 at the "T" intersection of North Jerusalem Road and Evelyn Avenue, East Meadow, New York. The accident occurred at approximately 2:00 p.m. during wet, snowy weather. Other than the defendant, there were no witnesses. Plaintiff was removed from the scene and died approximately 28 hours later.

Defendant was driving in the eastbound left lane on North Jerusalem Road, a two-way road separated by double yellow lines with traffic in each direction. At the point of impact defendant was not faced with any traffic control signals or devices.

Decedent was traveling northbound on Evelyn Avenue, a two-way side street with a stop sign at the corner of North Jerusalem Road.

Defendant was traveling approximately 35 to 40mph within the posted speed limit. According to defendant, he was about 30 feet from decedent's vehicle when he observed it coming from Evelyn and across North Jerusalem Road where it came to an abrupt stop in front of his van. There was oncoming westbound traffic at the time.

Defendant put on his brakes and the brakes locked. He attempted to avoid the collision. However, his vehicle struck decedent's door on the driver's side.

Plaintiff, in opposition to defendant's motion, submits an affidavit from Robert Genna, an Accident Reconstructionist and Assistant to the Director of the Suffolk County Crime Laboratory.

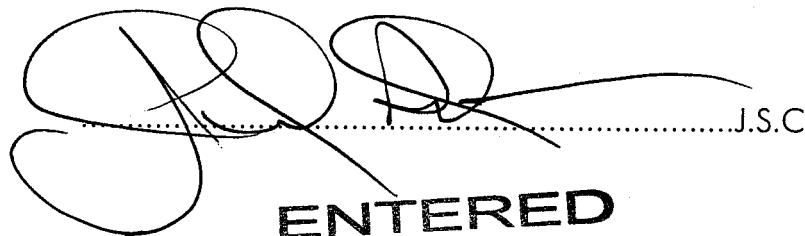
Mr. Genna notes that defendant was issued a summons for an uninspected vehicle and that the van he was driving was impounded for safety inspection, where it was determined that both rear tires were defective and "worn to the wear bars."

Upon reading defendant's testimony, and review all reports, photographs, and relevant data, decedent's expert concluded that (1) defendant should have had sufficient time and distance to slow or turn his vehicle to avoid the impact, (2) the lack of tread on the worn tires prevented defendant from controlling his vehicle when the wheels locked and (3) either excessive speed under the existing weather conditions and/or the defective tires prevented defendant from avoiding this accident.

These constitute issues of fact for a jury.

Turning to defendant's claim that this case does not meet the requirements of a wrongful death action or demonstrated any evidence of conscious pain and suffering, that issue is referred to the Trial Court and any applications defendants may wish to make at the close of plaintiff's case.

Dated: May 1, 2003


J.S.C

ENTERED

MAY 14 2003

NASSAU COUNTY
COUNTY CLERK'S OFFICE