

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 35
NASSAU COUNTY

**DEEKSHA PIPLANI, an infant by her father and
natural guardian, SUMIT PIPLANI, and SUMIT
PIPLANI.**

Plaintiffs.

- against -

Sequence No.: 001 & 002
Index No.: 002813/04

TAZ AMUSEMENTS and ASHLEY L. ZEPPIERI.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Notice of Cross-Motion and Affidavits Annexed	X
Answering Affidavits	X
Replying Affidavits	X

Upon reading the papers submitted and due deliberation having been had herein, plaintiffs' motion for an order 1) granting plaintiffs leave to serve an amended complaint; and 2) compelling defendant Taz Amusements to provide certain discovery is granted in part and denied in part as set forth below. Defendant Taz Amusements' cross-motion for an order pursuant to CPLR §3012 dismissing the complaint as asserted against this defendant is granted as set forth below.

The instant matter is an action based upon negligence as a result of the personal injuries suffered by Deeksha Piplani when she was allegedly struck, as a pedestrian, by the vehicle allegedly owned and operated by defendants on July 13, 2003. Plaintiffs move for an order granting them leave to serve an amended complaint naming an individual named Kimberly Zeppieri as a party defendant herein. The basis of this branch of the motion is that at the deposition of Taz Amusements, its witness, Kimberly Zeppieri, claimed to have been the titled and registered owner of the vehicle which allegedly struck Deeksha Piplani. Plaintiffs also move for an order compelling defendant Taz Amusements to respond to that portion of the preliminary conference order dated December 15, 2004 which directed defendants to disclose their insurance

policy limits.

Defendant Taz Amusements cross-moves for an order pursuant to CPLR 3012 dismissing the complaint as asserted against this defendant on the basis that if the court grants plaintiffs leave to add Kimberly Zeppieri as a defendant, plaintiffs may not claim that defendant Taz Amusements is the registered owner of the vehicle. Defendant Taz Amusements does not otherwise oppose plaintiffs' motion. Defendant Ashley L. Zeppieri has not submitted opposition to either the motion nor the cross-motion.

Defendant's cross-motion appears to more properly be made as a motion for summary judgment. As the parties have submitted proof on this issue, the court shall determine same as if properly made.

Defendant Taz Amusements makes a *prima facie*, if bare bones demonstration of entitlement to summary judgment on the basis that defendant Taz Amusements did not own the vehicle. Specifically, at the Taz Amusements deposition, Kimberly Zeppieri, Taz's "owner", testified that she was in fact the owner of the vehicle which allegedly struck Deeksha Piplani. The burden shifts to plaintiff to demonstrate an issue of fact which precludes granting defendant such relief. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

In opposition to the cross-motion, plaintiffs point out that the sole proof offered by defendant Taz Amusements is the deposition testimony of its own witness in which she stated that she was the owner. Plaintiffs claim that the certified copy of the registration documents, annexed to plaintiffs' opposition papers as Exhibit "A", reveal that Kimberly Zeppieri registered the vehicle to defendant Taz Amusements. The accident report, annexed to the opposition papers as Exhibit "B" indicates that the vehicle was registered by defendant Taz Amusements.

The registration documents, however, also reveal that the owner of the vehicle is Kimberly Zeppieri and that Taz Amusements is merely the registrant of the vehicle. Accordingly, the court finds that plaintiffs have failed to meet their burden and grants defendant Taz Amusements' cross-motion.

The court having dismissed the action as against defendant Taz Amusements, denies plaintiffs' motion to compel defendant Taz Amusements to comply with the preliminary conference order.

Based upon the foregoing, it is hereby directed that:

1) plaintiff shall serve a copy of the amended complaint upon Kimberly Zeppieri by March 15, 2006;

2) the amended complaint in the form annexed as an exhibit to plaintiffs' motion is deemed served upon defendant Ashley L. Zeppieri; and

3) the complaint is dismissed as against defendant Taz Amusements.

So Ordered.

Dated: February 17, 2006


A.J.S.C.

ENTERED

FEB 28 2006

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**