

SHORT FORM ORDER
SUPREME COURT, STATE OF NEW YORK
COUNTY OF NASSAU

**DENNIS C. HUMMEL, as the Administrator
of the Estate of ROSANN HUMMEL, DENNIS
HUMMEL, Individually, and SAMANTHA
HUMMEL, by her father and natural guardian,
DENNIS HUMMEL,**
Plaintiffs

**Trial/IAS Part 21
Index No. 03-18923
Sequence No. 04
Submit Date 8/24/07**

against

**COUNTY OF NASSAU, INCORPORATED
VILLAGE OF VALLEY STREAM, STEPHEN A.
MINIO, an infant over the age of 14 years by his
parents, ANNE L. MINIO and CARMELO A.
MINIO, ANNE L. MINIO, CARMELO A.
MINIO, Individually,**
Defendants

The following papers read on this motion:

- Notice of Motion/Order to Show Cause..... X**
- Answering Affidavits..... X**
- Replying Affidavits..... X**

PRESENT: HON. JOSEPH P. SPINOLA

Defendant, **STEPHEN A. MINIO, an infant over the age of 14 years by his
parents, ANNE L. MINIO and CARMELO A. MINIO, ANNE L.
MINIO, CARMELO A. MINIO, Individually,** moves for summary judgment pursuant
to CPLR §3212.

The underlying cause of action seeks damages for injuries resulting in the
plaintiff's death arising out of a motor vehicle accident. Defendant asserts that plaintiff-
decedent failed to yield a stop sign and the right-of-way to defendant's vehicle thereby
causing the fatal accident. Conversely, plaintiff-decedent asserts that she did in fact make
a full stop at the subject intersection, that defendant failed to use reasonable care when
proceeding in to the intersection and that defendants, **ANNE L. MINIO and**

CARMELO A. MINIO, were negligent in their entrustment of their motor vehicle to defendant, **STEPHEN A. MINIO**.

Summary judgment is a drastic remedy and should only be granted where there are no triable issues of fact. (*Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131 [1974]) The goal of summary judgment is to issue find, rather than to issue determine. (*Hantz v. Fleischman*, 155 A.D.2d 415, 457 N.Y.S.2d 350 [2d Dept. 1989]) A motion for summary judgment should be granted if the evidence presented demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. (*Baly v. Chrysler Credit Corp.*, 94 A.D.2d 781, 463 N.Y.S.2d 233 [2d Dept. 1983]) "In determining a motion for summary judgment, the court must ascertain whether there are any triable issues of fact in the proof laid bare by the parties' submissions of affidavits based on personal knowledge and documentary evidence, rather than in conclusory or speculative affidavits." *Id.*

Defendant makes much of the fact that a New York State Department of Motor Vehicles Safety Hearing was held in this matter and that it was the conclusion of the presiding Administrative Law Judge that defendant was not negligent in causing or contributing to the subject accident. The Court acknowledges that collateral estoppel is applicable to confer conclusive effect to the determination of an administrative agency. (*Ryan v. New York Tel. Co.*, 478 NYS2d 823; *Alamo v. A. McDaniel*, 2007 WL 2265131) However, collateral estoppel is not proper where a plaintiff did not have a full and fair opportunity to litigate the issue in the prior determination. In the instant matter plaintiff was not privy to the Safety Hearing and therefore did not have a full and fair opportunity to litigate the issue. Accordingly, collateral estoppel is not proper here.

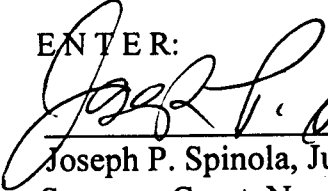
For plaintiff to succeed on its claim of negligent entrustment, plaintiff needs to prove that defendants, **ANNE L. MINIO** and **CARMELO A. MINIO**, entrusted their automobile to the defendant, **STEPHEN A. MINIO** and knew or should have known that **STEPHEN A. MINIO** was not competent to operate the vehicle safely. Such a determination is within the province of the jury. (*Bennett v. Geblein*, 71 AD2d 96)

Ultimately, in light of the above, the court finds that there are issues of fact which preclude summary judgment.

Based on the foregoing, defendants' motion is denied.

This constitutes the decision and order of the Court.

ENTER:


Joseph P. Spinola, Justice
Supreme Court, Nassau County

ENTERED
OCT 25 2007

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Dated: October 1, 2007