Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D15316
G/hu

_____AD3d_____ Argued - April 20, 2007

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
GABRIEL M. KRAUSMAN
EDWARD D. CARNI, JJ.

2006-02813 DECISION & ORDER

Christine Mowton, et al., appellants, v Harold Rabiner, et al., respondents.

(Index No. 28242/03)

Gruenberg & Kelly, P.C., Ronkonkoma, N.Y. (Guy Gruenberg and Peter Lavrenchik of counsel), for appellants.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Richard E. Lerner and Bianca Michelis of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Doyle, J.), dated January 23, 2006, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is denied.

The plaintiffs commenced this action to recover damages, inter alia, for personal injuries allegedly sustained when, on July 13, 2003, while driving through the intersection of Babylon Turnpike and Sunrise Highway in Merrick, their car was struck by a car driven by the defendant Harold Rabiner, and owned by the defendant Wanda W. Rabiner. The defendants moved for summary judgment dismissing the complaint, asserting that the accident arose as a result of a sudden and unforeseeable medical emergency suffered by Harold Rabiner at the time of the accident.

The defendants did not demonstrate their prima facie entitlement to summary judgment

because they failed to establish their claim "by competent or expert medical evidence" (*Parisella v Jack Haverty's Auto Parts,* 296 AD2d 539, 540; *cf. Hernandez v Ricci,* 15 AD3d 351; *McGinn v New York City Tr. Auth.,* 240 AD2d 378, 379). Since the defendants did not meet their burden, there is no need to address the sufficiency of the plaintiffs' submissions in opposition to the defendants' motion (*see Winegrad v New York Univ. Med. Ctr.,* 64 NY2d 851, 853). Accordingly, the defendants' motion should have been denied.

MASTRO, J.P., SANTUCCI, KRAUSMAN and CARNI, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court