

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

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Submitted - January 2, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
MARK C. DILLON
RUTH C. BALKIN, JJ.

2007-06592

DECISION & ORDER

Marvin Johnston, et al., appellants, v Anthony Spoto, respondent.

(Index No. 24937/06)

Taller & Wizman, P.C., Forest Hills, N.Y. (Y. David Taller of counsel), for appellants.

In an action to recover damages for personal injuries, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Taylor, J.), dated June 4, 2007, as denied their cross motion for summary judgment on the issue of liability.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the plaintiffs' cross motion for summary judgment on the issue of liability is granted.

A motor vehicle accident occurred on the exit ramp of the Belt Parkway, at or near its intersection with North Conduit Avenue in Queens. The plaintiff Audrey Curry was a passenger in a motor vehicle operated by the plaintiff Marvin Johnston when it was struck in the rear by a vehicle operated by the defendant.

It is established that "a rear-end collision with a stopped vehicle establishes a prima facie case of liability against the [driver and owner of] the moving vehicle and imposes a duty of explanation on its driver" (*Krakowska v Niksa* 298 AD2d 561; see *Vidal v Tsitsiashvili*, 297 AD2d 638).

The plaintiffs established a prima facie case for summary judgment by tendering the affidavit of Marvin Johnston, who stated that he had been at a complete stop at a stop sign at the end

of the exit ramp when he was struck in the rear by the defendant's vehicle. The defendant's assertion that the Johnston vehicle stopped short was insufficient to raise a triable issue of fact (*see Reed v New York City Transit Authority*, 299 AD2d 330; *Barberena v Budd Enterprises, Ltd.*, 299 AD2d 305; *McGregor v Manzo*, 295 AD2d 487).

SPOLZINO, J.P., SANTUCCI, DILLON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court