

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

D18658
O/kmg

_____AD3d_____

Submitted - March 3, 2008

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
JOHN M. LEVENTHAL, JJ.

2007-06733

DECISION & ORDER

Bina Bovt, et al., respondents, v Subaru Auto
Leasing, Ltd, et al., defendants, Triboro
Services, Inc., et al., appellants.

(Index No. 9561/05)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of
counsel), for appellants.

Asher & Associates, P.C., New York, N.Y. (Ryan H. Asher of counsel), for
respondents.

Longo & D'Apice, Brooklyn, N.Y. (Mark Longo and Deborah Ann Krammer of
counsel), for defendant Subaru Auto Leasing, Ltd.

Hawkins Feretic & Daly, LLC, New York, N.Y. (James M. Merlino of counsel), for
defendants Helpunet.com Corp. and Ferdor Bovt.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for
defendants De Xing Zheng and Ri Xin Zheng.

In an action to recover damages for personal injuries, etc., the defendants Triboro
Services, Inc., and Clement Figuera appeal from an order of the Supreme Court, Kings County (F.
Rivera, J.), dated June 22, 2007, which denied their motion for summary judgment dismissing the
complaint insofar as asserted against them.

April 1, 2008

Page 1.

BOVT v SUBARU AUTO LEASING, LTD.

ORDERED that the order is affirmed, with costs to the respondents.

The defendants Triboro Services, Inc., the owner of the vehicle involved in the subject accident, and Clement Figuera, the driver of the vehicle, failed to sustain their initial burden of demonstrating the absence of a triable issue of fact as to whether Figuera exercised due care to avoid the accident under the circumstances that existed at the time it occurred (*see* CPLR 3212[b]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Paulin v Needham*, 28 AD3d 531, 532). Figuera's deposition testimony that he was following at a distance of one-half of a car length when the vehicle in front of his stopped abruptly raised a triable issue as to whether Figuera contributed to the chain collision by following too closely or making a sudden stop in a lane of travel (*see* Vehicle and Traffic Law § 1129[a]; *Quezada v Aquino*, 38 AD3d 873; *Insinga v F. C. Gen. Contr.*, 33 AD3d 963, 964; *Brodie v Global Asset Recovery, Inc.*, 12 AD3d 390).

In light of the defendants' failure to make a *prima facie* showing of entitlement to judgment as a matter of law, the motion was properly denied (*see* *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853; *Paulin v Needham*, 28 AD3d at 532).

SKELOS, J.P., ANGIOLILLO, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court