

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

D21031
C/prt

_____AD3d_____

Submitted - October 16, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
MARK C. DILLON
RANDALL T. ENG, JJ.

2007-08863

DECISION & ORDER

Thomas Silva, respondent, v
Cristine N. Davis, et al., appellants.

(Index No. 23636/05)

Mendolia & Stenz, Westbury, N.Y. (Tracy Morgan of counsel), for appellants.

Della Mura & Ciacci, LLP, Bronx, N.Y. (Walter F. Ciacci of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Agate, J.), dated August 6, 2007, which denied their motion for summary judgment dismissing the complaint.

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

On the evening of July 23, 2005, the plaintiff was riding his motorcycle in the left lane of the southbound roadway of the West Side Highway in Manhattan, when he observed a vehicle owned by the defendant Rikei C. Williams and operated by the defendant Cristine N. Davis approximately 15 to 20 feet in front of him. In response to what he observed, the plaintiff "hit the brakes," causing his body to be ejected from the motorcycle and propelled into the defendants' motor vehicle, causing personal injuries.

After the plaintiff commenced the action, the defendants moved for summary judgment dismissing the complaint on the ground that the sole proximate cause of the accident was negligence on the part of the plaintiff.

November 12, 2008

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In support of their motion, the defendants established their prima facie entitlement to judgment as a matter of law by relying on Davis's deposition testimony that her car had been stopped at a traffic light for three to four seconds when the accident occurred (*see Zuckerman v City of New York*, 49 NY2d 557, 562). In opposition, the plaintiff failed to raise a triable issue of fact (*cf. Eybers v Silverman*, 37 AD3d 403, 405). Accordingly, the Supreme Court should have granted the defendants' motion.

FISHER, J.P., MILLER, DILLON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court