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

D21468
C/kmg

_____AD3d_____ Argued - October 27, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-07684 DECISION & ORDER

Juan Dedios Chiok, et al., appellants,
v C.S. Kouridakis, et al., respondents.

(Index No. 11092/04)

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Stephen C. Glasser and Susan M. Jaffe of counsel), for appellants.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiffs appeal from a judgment of the Supreme Court, Richmond County (Ajello, J.), dated August 2, 2007, which upon the denial of their motion pursuant to CPLR 4401 for judgment as a matter of law made at the close of all evidence, a jury verdict in favor of the defendants and against them on the issue of liability, and the denial of their motion pursuant to CPLR 4404(a) to set aside the verdict, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Ahmad v Grimaldi*, 40 AD3d 786; *see Delayhaye v Caledonia Limo & Car Serv., Inc.*, 49 AD3d 588; *Klopin v Masri*, 45 AD3d 737). However, "[i]f the operator of the moving vehicle rebuts the plaintiffs' prima facie case with a non-negligent excuse, then the operator may not be held liable" (*Artis v Jamaica Buses*, 262 AD2d 511, 512; *see Simpson v Eastman*, 300 AD2d 647).

Here, the defendant operator offered a nonnegligent explanation for the accident which the jury accepted. Thus, it cannot be said that there is no valid line of reasoning or permissible inferences which would support the jury verdict in the defendants' favor (*see Szczerbiak v Pilat*, 90 NY2d 553, 556), or that the jury could not have reached its verdict on any fair interpretation of the evidence (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *see also Delayhaye v Caledonia Limo & Car Serv., Inc.*, 49 AD3d 588; *Klopchin v Masri*, 45 AD3d 737; *Morrison v Montzoutsos*, 40 AD3d 717, 718; *Garrison v Geyer*, 19 AD3d 1136; *Drake v Drakoulis*, 304 AD2d 522; *Simpson v Eastman*, 300 AD2d 647).

RIVERA, J.P., LIFSON, ENG and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court