

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

D21561
O/prt

_____AD3d_____

Submitted - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2008-04968

DECISION & ORDER

Allstate Insurance Company, as subrogee of Karin Miller, respondent, v Farah B. Bader, et al., appellants.

(Index No. 3027/07)

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

Ross & Suhoff, LLC, New York, N.Y. (Lois M. Vitti of counsel), for respondent.

In an action to recover damages for injury to property, the defendants appeal from an order of the Supreme Court, Westchester County (Leibowitz, J.), entered April 29, 2008, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

On March 30, 2006, a vehicle driven by the defendant Farah B. Bader and owned by the defendant Saleem Motors and Co. (hereinafter together the defendants) hit a vehicle driven by the plaintiff's subrogor, Karin Miller, in the rear on an exit ramp from the Taconic State Parkway to Route 202, in Westchester County. The Supreme Court granted the plaintiff's motion for summary judgment on the issue of liability, and we affirm.

"A rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Kimyagarov v Nixon Taxi Corp.*, 45 AD3d 736; see *Klopchin v Masri*, 45 AD3d 737; *Nieves v JHH Transp., LLC*, 40 AD3d

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ALLSTATE INSURANCE COMPANY, as subrogee of MILLER v BADER

1060). In opposition to the plaintiff's demonstration of its prima facie entitlement to judgment as a matter of law, the defendants failed to proffer sufficient evidence to raise a triable issue of fact. Accordingly, summary judgment was properly awarded to the plaintiff on the issue of liability.

The defendants' remaining contention is without merit.

MASTRO, J.P., FLORIO, ENG and CHAMBERS, 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