

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

D24695  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 25, 2009

MARK C. DILLON, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
LEONARD B. AUSTIN, JJ.

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2008-08206

DECISION & ORDER

Shelly Carrington-White, respondent,  
v Jennifer Malvey, appellant.

(Index No. 22664/07)

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Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for appellant.

Gersowitz, Libo & Korek, P.C., New York, N.Y. (Stacey T. Sokol of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated June 25, 2008, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

In response to the plaintiff's demonstration of her entitlement to judgment as a matter of law on the issue of liability, the defendant failed to submit evidence sufficient to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). The defendant's contention that she must have been struck in the rear by an unidentified vehicle immediately before her vehicle struck a cement barrier, causing her vehicle to then strike the plaintiff's vehicle, was pure speculation (*see Woods v Johnson*, 44 AD3d 1201; *cf. Empire Ins. Co. v Lackowitz*, 58 AD3d 797).

DILLON, J.P., DICKERSON, LOTT and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

October 20, 2009

CARRINGTON-WHITE v MALVEY