

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**CA 11-02147**

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND MARTOCHE, JJ.

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OPHELIA KWEH, AS GUARDIAN OF THE PERSON AND  
PROPERTY OF JOHN KWEH, AND OPHELIA KWEH,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER C. EDMUNDS, PATRICK D. SAMPSON,  
SKINNER SALES, INC., DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANT.  
(ACTION NO. 1.)

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OPHELIA KWEH, AS ADMINISTRATRIX OF THE ESTATE  
OF SAMPSON KWEH, DECEASED,  
PLAINTIFF-RESPONDENT,

V

CHRISTOPHER C. EDMUNDS, PATRICK D. SAMPSON,  
SKINNER SALES, INC., DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANT.  
(ACTION NO. 2.)

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PHILIP KWEH, PLAINTIFF-RESPONDENT,

V

CHRISTOPHER C. EDMUNDS, PATRICK D. SAMPSON,  
SKINNER SALES, INC., DEFENDANTS-APPELLANTS,  
ET AL., DEFENDANT.  
(ACTION NO. 3.)

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KADRA DAYOW, AS ADMINISTRATRIX OF THE ESTATE  
OF MOHAMED DAYOW, DECEASED,  
PLAINTIFF-RESPONDENT,

V

OPHELIA KWEH, AS ADMINISTRATRIX OF THE ESTATE  
OF JUTY KWEH, DECEASED, DEFENDANT,  
PATRICK D. SAMPSON AND CHRISTOPHER C. EDMUNDS,  
DEFENDANTS-APPELLANTS.  
(ACTION NO. 4.)

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KADRA DAYOW, AS ADMINISTRATRIX OF THE ESTATE  
OF MOHAMED DAYOW, DECEASED,  
PLAINTIFF-RESPONDENT,

V

SKINNER SALES, INC., DEFENDANT-APPELLANT.  
(ACTION NO. 5.)

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COSTELLO, COONEY & FEARON, PLLC, SYRACUSE (DONALD S. DIBENEDETTO OF  
COUNSEL), FOR DEFENDANTS-APPELLANTS.

BRINDISI, MURAD, BRINDISI, PEARLMAN, JULIAN & PERTZ, LLP, UTICA  
(RICHARD PERTZ OF COUNSEL), THE GOLDEN LAW FIRM, AND PETER M. HOBAICA  
LLC, FOR PLAINTIFFS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Oneida County (Norman  
I. Siegel, A.J.), entered February 15, 2011 in personal injury and  
wrongful death actions. The order, insofar as appealed from, denied  
the motion of defendants Christopher C. Edmunds, Patrick D. Sampson  
and Skinner Sales, Inc. for summary judgment dismissing the complaints  
and all cross claims against them.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Plaintiffs commenced these negligence and wrongful  
death actions stemming from a motor vehicle accident that occurred  
when a vehicle operated by decedent Juty Kweh (Kweh) collided with a  
vehicle operated by defendant Christopher C. Edmunds. The collision  
occurred when Edmunds and Kweh were driving in opposite directions on  
a two-lane highway, and the vehicle driven by Kweh entered Edmunds's  
lane of travel. Supreme Court properly denied the motion of Edmunds,  
defendant Patrick D. Sampson, and defendant Skinner Sales, Inc.  
(hereafter, defendants) for summary judgment seeking dismissal of the  
complaints and all cross claims against them. In order to establish  
their entitlement to summary judgment based on the emergency doctrine  
in this crossover case, defendants were required to establish "both  
that [Kweh's] vehicle 'suddenly entered the lane where [Edmunds] was  
operating [his vehicle] in a lawful and prudent manner and that there  
was nothing [Edmunds] could have done to avoid the collision' "  
(*Fratangelo v Benson*, 294 AD2d 880, 881, quoting *Pilarski v  
Consolidated Rail Corp.*, 269 AD2d 821, 822; see *Rost v Stolzman*, 81  
AD3d 1401, 1402). Defendants failed to meet that burden inasmuch as  
the proof submitted by them in support of their motion, including the  
accident reconstruction analysis and Edmunds's deposition testimony,  
raises an issue of fact whether Edmunds was negligent in failing to  
take sufficient evasive action (see *Testerman v Zielinski*, 68 AD3d  
1751, 1752-1753; *Fratangelo*, 294 AD2d at 881). In any event,  
plaintiffs raised a triable issue through their expert's affidavit  
(see *Richards v Bartholomew*, 60 AD3d 1405, 1406). Contrary to

defendants' contention, the expert had a sufficient evidentiary

foundation to support his opinions (*cf. Rost*, 81 AD3d at 1403).

Entered: March 16, 2012

Frances E. Cafarell  
Clerk of the Court