

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

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Argued - November 2, 2017

REINALDO E. RIVERA, J.P.  
JEFFREY A. COHEN  
SYLVIA O. HINDS-RADIX  
VALERIE BRATHWAITE NELSON, JJ.

2017-02824

DECISION & ORDER

Diana Faulknor, respondent, v Gina's Trucking, Inc.,  
et al., appellants, et al., defendants.

(Index No. 62389/15)

Cascone & Kluepfel, LLP, Garden City, NY (James K. O'Sullivan of counsel), for  
appellants.

Mallilo & Grossman, Flushing, NY (Jessica Kronrad and Mikhail Pinkusovich of  
counsel), for respondent.

In a consolidated action to recover damages for personal injuries, the defendants  
Gina's Trucking, Inc., and Rory J. Jenkins appeal from an order of the Supreme Court, Westchester  
County (Wood, J.), dated March 7, 2016, which denied their motion for summary judgment  
dismissing the complaint insofar as asserted against them.

ORDERED that the order is reversed, on the law, with costs, and the motion of the  
defendants Gina's Trucking, Inc., and Rory J. Jenkins for summary judgment dismissing the  
complaint insofar as asserted against them is granted.

On July 7, 2015, the plaintiff allegedly was walking on a sidewalk in an easterly  
direction in Westchester. After she stepped off the sidewalk onto the street, her right foot came into  
contact with the rear of a tractor-trailer that was making a right turn. According to the defendant  
Rory J. Jenkins, the operator of the tractor, he had completed approximately 85% of the turn at the  
time of the contact with the plaintiff. The trailer attached to the tractor was 48 feet long. The  
plaintiff allegedly did not see the tractor-trailer prior to the impact. The plaintiff allegedly sustained

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personal injuries as a result of the incident, and she commenced this action against, among others, the defendants Gina's Trucking, Inc., the owner of the tractor-trailer, and Jenkins (hereinafter together the appellants). The appellants moved for summary judgment dismissing the complaint insofar as asserted against them, and the Supreme Court denied the motion.

The appellants established their prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff was the sole proximate cause of the accident (*see Stern v Schwartz*, 65 AD3d 1130; *Rogers v City of New York*, 52 AD3d 589, 590; *Carrasco v Monteforte*, 266 AD2d 330, 331). The evidence submitted in support of the appellants' motion established that the plaintiff failed to see what was there to be seen and walked into the path of the rear of the tractor-trailer. In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, the Supreme Court should have granted the appellants' motion for summary judgment dismissing the complaint insofar as asserted against them.

RIVERA, J.P., COHEN, HINDS-RADIX and BRATHWAITE NELSON, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court