

Young Ja Kim v Molina
2007 NY Slip Op 30034(U)
March 2, 2007
Supreme Court, Queens County
Docket Number: 0024283
Judge: David Elliot
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IA Part 14
Justice

	x	Index Number <u>24283</u> 2005
YOUNG JA KIM, et al.		
- against -		Motion Date <u>December 12,</u> 2006
JESUS MOLINA		Motion Cal. Number <u>13</u>
	x	

The following papers numbered 1 to 7 read on this motion by plaintiff-defendant-on-the-counterclaim Young Ja Kim for summary judgment dismissing the counterclaim.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-4
Answering Affidavits - Exhibits	5-7

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action to recover damages for personal injuries allegedly suffered as a result of a motor vehicle accident. The subject accident occurred on April 11, 2005. The subject accident occurred when a motor vehicle owned and operated by plaintiff Young Ja Kim came into contact with a motor vehicle owned and operated by the defendant. The plaintiff Byeong Wook Cho was a passenger in the vehicle operated by his wife, Young Ja Kim. Plaintiffs filed and served a summons and complaint to which the defendant answered and interposed a counterclaim against the plaintiff Young Ja Kim. Plaintiff-defendant-on-the-counterclaim Young Ja Kim now moves to dismiss the counterclaim.

On a motion for summary judgment, the movant must offer sufficient evidence to establish its prima facie entitlement to judgment as a matter of law (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]). The plaintiff-defendant-on-the-counterclaim

established her entitlement to summary judgment through the submission of the examinations before trial of both plaintiffs and the defendant. The deposition testimony submitted establishes that after the plaintiff came to a stop at an intersection she was struck in the rear by a vehicle operated by the defendant. A rear-end collision with a stopped motor vehicle establishes a prima facie case of liability against the operator of the moving vehicle, which requires a non-negligent explanation for the collision (see Rainford v Han, 18 AD3d 638 [2005]; Russ v Investech Sec., 6 AD3d 602 [2004]). To rebut this presumption requires evidence supporting a non-negligent explanation for the accident (see Taveras v Amir, 24 AD3d 655 [2005]).

In opposition to the motion, the defendant has failed to offer any evidence to raise a triable issue of fact. The defendant's argument that summary judgment must be denied because the plaintiff driver came to a stop at an intersection while the light was still green and he did not have enough time to stop is without merit. A sudden stop by the driver of the lead vehicle, standing alone, is insufficient to rebut the inference of negligence (Neidereger v Misuraca, 27 AD3d 537 [2006]; Ayach v Ghazal, 25 AD3d 742 [2006]; Rainford, 18 AD3d at 639; Russ, 6 AD3d at 603).

Accordingly, the motion is granted and the counterclaim is dismissed. In light of the foregoing determination, the court, sua sponte, awards summary judgment in favor of the plaintiffs and against the defendant on the issue of liability.

Dated: March 2, 2007

J.S.C.