

**Shackelford-Johnson v Silver Star Auto Resources,  
LLC**

2007 NY Slip Op 31608(U)

June 6, 2007

Supreme Court, Queens County

Docket Number: 0021100/2005

Judge: David Elliot

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IAS PART 14  
**Justice**

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VELVETTA L. SHACKELFORD-JOHNSON No. 21100/05	
AND HERBERT JOHNSON,	
	Motion
Plaintiffs,	Date March 20, 2007
-against-	
	Motion
SILVER STAR AUTO RESOURCES,	Cal. No. 17
LLC, AUDREY D. POLLARD AND	
STEPHANO K. NOEL,	Motion
	Seq. No. 1
Defendants.	
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Plaintiffs commenced this action seeking to recover damages for personal injuries alleged to have been sustained on September 11, 2004 due to a motor vehicle accident at the intersection of 78<sup>th</sup> Road and Queens Boulevard, in the County of Queens, City and State of New York.

Defendant Audrey D. Pollard (Pollard) moves for an order pursuant to CPLR 3212 granting summary judgment in her favor on the issue of liability.

Plaintiffs cross-move for an order granting summary judgment to plaintiffs on the issue of liability and setting this matter down for an assessment of damages.

Contentions of the Parties

Defendant Pollard asserts that the subject accident involved two vehicles both heading in the same direction in the same lane of travel on 78<sup>th</sup> Avenue. Defendant Pollard submits her deposition testimony. She testified that immediately prior to the accident, she slowed her vehicle

and stopped in response to seeing a vehicle stop in front of her. Within a few seconds of her stopping, the rear of her vehicle was struck by defendant Stephano K. Noel's (Noel) vehicle. Plaintiff Velveta L. Shackelford (Plaintiff) was a passenger in defendant Pollard's car. It is argued that defendant Pollard's vehicle, while stopped in traffic, was struck in the rear by another vehicle. Defendant Pollard cannot be charged with having caused or contributed to the accident.

Plaintiffs assert that the accident occurred when defendant Noel's vehicle crashed into the vehicle driven by defendant Pollard. Plaintiff testified that, at the time of the accident, defendant Pollard's vehicle was slowing down because of traffic. Defendant Noel testified that he was following the Maxima, defendant Pollard's vehicle, and was about 3/4 of a car length behind it. His front bumper hit defendant Pollard's rear bumper. Defendant Pollard testified that her vehicle was standing still at the time of impact. She had stopped because a vehicle in front of her stopped. Plaintiffs submit the police accident report which indicates that defendant Pollard stated that she was cut off by an uninvolved vehicle causing her to stop short at which time she was struck by defendant Noel's vehicle. Defendant Noel stated that defendant Pollard's vehicle stopped short and he could not stop in time. Plaintiffs argue that, as a passenger, it is clear that the plaintiff was free from culpable conduct on the issue of liability which does not prevent comparative negligence as between the two defendant drivers.

Defendants Silver Star Auto Resources, LLC (Silver Star) and Noel assert that there is no evidence that defendant Noel was not traveling a safe distance behind the Pollard vehicle or that he was not proceeding at a safe speed under the circumstances. He testified that the accident occurred while he was traveling in heavy traffic in the left lane behind defendant Pollard's vehicle. Defendant Pollard had testified that she intended to make a left turn prior to the impact. Defendant Noel testified that there was no signal on the Pollard vehicle indicating an intent to turn left. He also intended to turn left, was operating his vehicle at about 15 mph and the impact occurred because the Pollard vehicle stopped abruptly in front of him when an unknown vehicle cut in front of the Pollard vehicle. Defendants Silver Star and Noel argue that where a defendant driver contends that the vehicle in front of him came to an unexplained sudden stop, questions of fact are raised which

should be submitted to a jury. Questions arise as to whether defendant Pollard stopped abruptly and/or inexplicably at the light or could have taken any action to avoid the impact as the testimonies of the parties differ significantly.

#### Decision of the Court

The motion by defendant Pollard for summary judgment on the issue of liability is granted. The complaint and all cross-claims are hereby dismissed as against defendant Audrey D. Pollard. The cross-motion by plaintiffs is granted to the extent that summary judgment is awarded in plaintiffs' favor as to issue of liability solely as against defendants Silver Star Auto Resources, LLC and Stephano K. Noel.

As noted by the court in Ayach v. Ghazal, 25 AD3d 742: "The law is well-settled that '[a] rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the operator of the moving vehicle' (see, Russ v. Investech Sec., 6 AD3d 602, 775 NYS2d 867). 'A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence' (Russ v. Investech Sec., supra at 602, 775 NYS2d 867; see Belitsis v. Airborne Express Frgt. Corp., 306 AD2d 507, 761 NYS2d 329; Dickie v. Pei Xiang Shi, 304 AD2d786, 759 NYS2d 141). The defendants' claims that the plaintiffs' vehicle was cut off by a third vehicle supported the plaintiffs' position that the plaintiff driver may not be charged with comparative fault, and did not provide a non-negligent explanation for the defendant driver's conduct."

In such case, the plaintiff driver, whose car was hit in the rear by the defendant driver, was held to be entitled to summary judgment on the issue of liability.

In the instant case, defendant Pollard has established her entitlement to judgment as a matter of law. The evidence showed that she had come to a stop because the vehicle in front of her stopped and her vehicle was struck in the rear by defendant driver Noel's vehicle. Defendant Noel's assertion that defendant Pollard's vehicle was cut off by a third vehicle does not, as noted above, provide a non-negligent explanation for his failure to avoid hitting defendant Pollard's vehicle in the rear.

Accordingly, the motion by defendant Pollard for summary judgment on the issue of liability is granted. The complaint and all cross-claims are hereby dismissed as against defendant Audrey D. Pollard. The cross-motion by plaintiffs is granted to the extent that summary judgment is awarded in plaintiffs' favor as to issue of liability solely as against defendants Silver Star Auto Resources, LLC and Stephano K. Noel.

Dated: June 6 , 2007

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HON. DAVID ELLIOT