

**Lazri v Loester**

2010 NY Slip Op 30124(U)

January 8, 2010

Supreme Court, Nassau County

Docket Number: 4259/08

Judge: Antonio I. Brandveen

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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN  
J. S. C.

SETKIE LAZRI,

Plaintiff,

- against -

PAUL LOESTER, CHRISTOPHER LOESTER,  
PHILIP CRISPINO, ANDREA CRISPINO and  
ELLEN LAGOUEDES,

Defendants.

TRIAL / IAS PART 29  
NASSAU COUNTY

Index No. 4259/08

Motion Sequence No. 001, 002

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits .....	<u>1, 2</u>
Answering Affidavits .....	<u>3, 4, 5, 6</u>
Replying Affidavits .....	<u>7, 8</u>
Briefs: Plaintiff's / Petitioner's .....	_____
Defendant's / Respondent's .....	_____

The defendants Paul Loester and Christopher Loester move for summary judgment dismissing all claims and cross claims against them on the issue of liability. The defendants Philip Crispino and Andrea Crispino cross move for summary judgment dismissing all claims and cross claims against them on the issue of liability. The plaintiff opposes the motion and the cross motion. The defendant Ellen Lagoudes opposes the motion and the cross motion.

The plaintiff seeks to recover damages for personal injury allegedly sustained in a chain-reaction motor vehicle accident on November 9, 2006, at approximately 2:00 p.m.,

at the intersection of Long Beach Road and Anchor Avenue, in Oceanside, New York. This Court carefully reviewed and considered all of the papers submitted by the parties with respect to this motion, including the deposition testimony of the motor vehicle operators.

The plaintiff testified on April 20, 2009, she operated her motor vehicle northbound in the left lane of a two-way, two lane roadway on Long Beach Road; put on the directional signal to indicate a left turn; slowed down; and stopped completely to allow the southbound traffic to clear before attempting the left turn. The plaintiff testified, while stopped for 10 seconds, the motor vehicle operated by Christopher Loester struck the rear of her vehicle. The plaintiff also testified Loesters' vehicle again struck the rear of her vehicle two seconds after the first impact. The plaintiff further testified Christopher Loester said, after the accident, "I'm sorry, somebody hit me."

Christopher Loester testified on April 20, 2009, he operated a motor vehicle, owned by Paul Loester, his father, on Long Beach Road in the left lane, and stopped behind the plaintiff's vehicle which had stopped with its brake lights on, and signaling a left turn. Christopher Loester testified, while waiting, stopped with his foot on the brake for approximately two minutes or so, he heard "tire squealing," so he turned around, and in about three seconds there was the first impact. Before that impact, he observed in his rearview mirror a female driver stopped behind him, and testified "she was stopped approximately two seconds or so, maybe three seconds at the max," and further testified, "I heard the screeching, but I could not tell where it was coming from." Christopher

Loester testified approximately one second after that viewing the first medium impact occurred to his rear bumper which caused his vehicle to move forward lightly striking the plaintiff's vehicle. Christopher Loester testified there was one impact to the rear of his vehicle, and one impact to the front of his vehicle.

Andrea Crispino testified on June 5, 2009, at approximately 2:00 p.m., she operated a motor vehicle, owned by Philip Crispino, her father, on Long Beach Road in the left lane with two vehicles in front of her. Andrea Crispino testified the weather was sunny and clear, and the road Andrea Crispino testified a car hit her vehicle in the rear while she was stopped behind another vehicle which her car then hit. Andrea Crispino testified there were two impacts within a matter of a second, to wit an impact by her vehicle to the vehicle stopped for a couple of seconds in front of hers and the first impact by the vehicle hitting her vehicle in the rear.

Lagoudes testified she operated a motor vehicle on Long Beach Road in the left lane, and as she approached the accident site her vehicular speed was "probably around maybe 15 or 20 miles per hour." Lagoudes testified as she approached where the accident occurred there were vehicles ahead in the left lane, and when asked how many vehicles she saw, Lagoudes testified "it was pretty clear in front of me." Lagoudes testified she applied the brake, but her vehicle traveled maybe 10 feet, and upon applying the brake until the time of contact with the Crispinos' vehicle maybe a couple of seconds passed. Lagoudes testified the front of her car made contact with the rear of car immediately in front of her, and went under that other vehicle. Lagoudes described the impact as

moderate. Lagoudes testified the Crispinos' vehicle was moving at probably four, five miles per hour at the moment of impact, and as well described it as "just rolling."

Lagoudes further testified she neither saw nor heard any other impact before the impact between her vehicle and the Crispinos' vehicle, and after the impact with the Crispino vehicle she did not see any impact between the Crispinos' and Loesters' vehicles, but observed "just the rim or something . . . Yeah, all parts of the hood, the front bumper, I think the front bumper had a minor scratch on it, it was really mainly the hood that was really scratched."

"Negligence cases by their very nature do not usually lend themselves to summary judgment, since often, even if all parties are in agreement as to the underlying facts, the very question of negligence is itself a question for jury determination" (*Ugarriza v. Schmieder*, 46 N.Y.2d 471, 474). Under CPLR 3212(b), a motion for summary judgment "shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." "The motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." Summary judgment is a drastic remedy that is awarded only when it is clear that no triable issue of fact exists (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 325; *Andre v. Pomeroy*, 35 N.Y.2d 361). Summary judgment is the procedural equivalent of a trial (*Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 A.D. 2d 572). Thus the burden falls

upon the moving party to demonstrate that, on the facts, it is entitled to judgment as a matter of law (*see, Whelen v. G.T.E. Sylvania Inc.*, 182 A.D. 2d 446). The court's role is issue finding rather than issue determination (*see, e.g., Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395; *Gervasio v. Di Napoli*, 134 A.D.2d 235, 236; *Assing v. United Rubber Supply Co.*, 126 A.D.2d 590). Nevertheless, "the court must evaluate whether the alleged factual issues presented are genuine or unsubstantiated" (*Gervasio v. Di Napoli, supra*, 134 A.D.2d at 236, quoting from *Assing v. United Rubber Supply Co., supra; see, Columbus Trust Co. v. Campolo*, 110 A.D.2d 616, *aff'd* 66 N.Y.2d 701). If the issue claimed to exist is not genuine, and, therefore, there is nothing to be resolved at the trial, the case should be summarily decided (*see, Andre v. Pomeroy*, 35 N.Y.2d at 364; *Assing v. United Rubber Supply Co., supra*).

The Second Department holds:

A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Rainford v. Sung S. Han*, 18 A.D.3d 638, 639, 795 N.Y.S.2d 645; *Niyazov v. Bradford*, 13 A.D.3d 501, 786 N.Y.S.2d 582; *Russ v. Investech Sec.*, 6 A.D.3d 602, 775 N.Y.S.2d 867).

*Morrison v. Montzoutsos*, 40 A.D.3d 717, 835 N.Y.S.2d 713 [2<sup>nd</sup> Dept., 2007].

Here, the defendants Paul Loester and Christopher Loester, and Philip Crispino and Andrea Crispino made a *prima facie* showings of their entitlement to judgment as a matter of law by submitting evidence that their vehicle was struck in the rear by the Crispino vehicle (*see Arias v. Rosario*, 52 A.D.3d 551, 860 N.Y.S.2d 168 [2<sup>nd</sup> Dept, 2008]). The

papers submitted in opposition by the plaintiff and Lagoudes to the motion by all of these defendants failed to raise a triable issue of fact as to the defendants Paul Loester and Christopher Loester, and Philip Crispino and Andrea Crispino, and whether any negligence by the defendants Paul Loester and Christopher Loester, and Philip Crispino and Andrea Crispino contributed to the collisions by them to the plaintiff's vehicle or any other vehicle (*see Smith v. Seskin*, 49 A.D.3d 628, 854 N.Y.S.2d 420 [2<sup>nd</sup> Dept, 2008]).

Lagoudes testimony regarding her speed and distance behind the Crispino vehicle nor her claim the Crispinos' vehicle was moving, when the others were stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Jumandeo v. Franks*, 6 A.D.3d 614, 867 N.Y.S.2d 541 [2<sup>nd</sup> Dept., 2008]).

Accordingly, the motion and cross motion are granted in all respects.

So ordered.

Dated: **January 8, 2010**

ENTER:



J. S. C.

FINAL DISPOSITION

NON FINAL DISPOSITION XXX

**ENTERED**  
JAN 15 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE