

**Speller v Clear-Rite Pools and Spas, Inc.**

2014 NY Slip Op 32803(U)

March 25, 2014

Sup Ct, Westchester County

Docket Number: 52340/2012

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILED AND ENTERED  
ON 3/28 2014  
WESTCHESTER COUNTY CLERK

**SUPREME COURT OF THE STATE OF NEW YORK  
WESTCHESTER COUNTY  
P R E S E N T: HON. SAM D. WALKER, J.S.C.**

-----X

SHANDI SPELLER

Plaintiff,

Index No. 52340/2012

**DECISION & ORDER**

Seq. 1

-against-

CLEAR-RITE POOLS AND SPAS, INC. and  
LAURA S. BERGER,

Defendants.

-----X

The following papers were read on a motion for summary judgment on the issue of liability:

PAPERS	NUMBERED
Notice of Motion/Affirmation/Exhibits A-E	1-7
Affirmation in Opposition	8
Reply Affirmation	9

Upon the foregoing papers it is ordered that the motion is GRANTED.

Plaintiff commenced this action to recover damages for injuries sustained by plaintiff Shandi Speller (hereinafter "plaintiff") in a motor vehicle accident. Plaintiff has moved for summary judgment on the issue of liability.

**FACTUAL AND PROCEDURAL BACKGROUND**

On May 6, 2011, plaintiff was operating her automobile on Route 202 in Somers, New York, when her vehicle was struck from behind by a vehicle owned by Clear-Rite Pools and Spas, Inc. ("Clear-Rite") and operated by Laura S. Berger, an employee of Clear-Rite. Plaintiff avers that her vehicle was struck in the rear by defendant's vehicle.

Subsequently, plaintiff commenced this action. The issue has been joined and discovery is complete.

### **LIABILITY**

Plaintiff seeks partial summary judgment. Specifically, she requests a determination of the liability issue in her favor, with the trial to be limited to the issue of damages.

In support of her motion, plaintiff has offered her own unsigned deposition, the signed deposition of the defendant Laura Berger and the affirmation of her attorney. Defendant opposes the motion, stating that plaintiff's unsigned deposition does not suffice as proof needed to support the motion and that there are questions of fact, such as whether the plaintiff's brake lights were fully functional, whether plaintiff was stopped and the time she was stopped prior to the accident or the manner in which she slowed.

The evidence submitted by plaintiff established entitlement to summary judgment as a matter of law, thereby shifting the burden to defendants to demonstrate the existence of a factual issue requiring a trial. *Macauley v. Elrac, Inc.*, 6 A.D.3d 584, 585 (2d Dept. 2004)[Rear-end collision is sufficient to create a prima facie case of *liability*]. If the operator of the striking vehicle fails to rebut this presumption and the inference of negligence, the operator of the stopped vehicle is entitled to summary judgment on the issue of liability. *Leonard v. City of New York*. 273 A.D.2d 205 (2d Dept. 2000); *Longhito*

*v. Klein*. 273 AD2d 281(2d Dept. 2000); *Velasquez v. Quijada*. 269 AD2d 592 (2d Dept. 2000); *Brant v. Senatobia Operating Corp.*, 269A.D.2d 483 (2d Dept. 2000).

Here, defendants' burden has not been met. Defendants fail to submit an affidavit from a person with knowledge of the facts to disprove defendants' liability. The affidavit of defendant's attorney is of no probative value as it is not based on personal knowledge nor accompanied by any supportive documents. *Ramnarine v. Memorial Center for Cancer and Allied Diseases*, 281 A.D.2d 218, 722 N.Y.S.2d 493 (1<sup>st</sup> Dept., 2001).

In *Leal v. Wolf*. 224 A.D.2d 638 N.Y.S.2d 110 (2d Dept. 1996), the Second Department held that "since the defendant was under a duty to keep a safe distance between his car and Leal's car (see Vehicle and Traffic Law Section 1129[a]), his failure to do so in absence of a non negligent explanation construed negligence as a matter of law (See, *Silberman v. Surrey Cadillac Limousine Service*, 109 A.D.2d 883)".

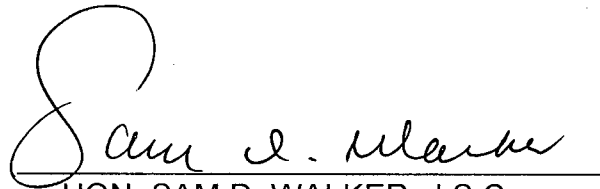
Defendant's signed deposition, states that she looked away from the road for a second and when she looked back, plaintiff's vehicle was slowing down and coming to a stop and she was not able to prevent her vehicle from colliding with plaintiff's vehicle. Therefore, the Court finds that there are no issues of fact to be determined.

Based on all the foregoing, the motion is GRANTED.

The parties are directed to appear before the Settlement Conference Part, on May 13, 2014 at 9:30am in Courtroom 1600.

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York  
March 25, 2014

  
HON. SAM D. WALKER, J.S.C.