

**Williams v Shismenos Inc.**

2015 NY Slip Op 32531(U)

December 3, 2015

Supreme Court, Kings County

Docket Number: 505948/2014

Judge: Bernadette Bayne

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, Brooklyn, New York, on the 3<sup>rd</sup> day of December 2015.

P R E S E N T:

JUSTICE BERNADETTE BAYNE

Justice.

ALEXIA WILLIAMS,

Plaintiff,

**DECISION AND ORDER**

- against -

Index No. 505948/2014

SHISMENOS INC., F. ZAMAN, HERTZ VEHICLES LLC  
and EDUARDO MICHAEL GLOVER,

Defendants.

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CLERK OF COURT

<u>The following papers numbered 1 to 4 read on this motion:</u>	<u>Papers Numbered</u>
Notice of Motion/ Affidavits (Affirmations) Annexed _____	<u>1</u>
Affirmation in Opposition _____	<u>2</u>

This action was commenced by ALEXIA WILLIAMS (plaintiff) to recover damages for serious personal injuries sustained in a rear-end motor vehicle collision. By notice of motion filed on March 26, 2015 under motion sequence one, plaintiff now moves this Court for an Order, pursuant to CPLR §3212, for summary judgment on the issue of liability as against defendants

SHISMENOS INC., and F. ZAMAN (SHISMENOS and ZAMAN). SHISMENOS and ZAMAN oppose the motion on the grounds that the motion is premature and that issues of fact exist that cannot be resolved until further discovery is completed.

### **Background**

On March 15, 2014, plaintiff was a passenger in a motor vehicle owned by SHISMENOS and operated by ZAMAN. ZAMAN hit the rear of the stopped motor vehicle owned by defendant HERTZ VEHICLES LLC and operated by defendant EDUARDO MICHAEL GLOVER (GLOVER).

In support of plaintiff's motion for summary judgment on the issue of liability, plaintiff submitted a sworn affidavit and the police accident report. Plaintiff, in the affidavit, avers that at the time of the collision, GLOVER's vehicle was at a complete stop within its lane at a red traffic signal. Moreover, plaintiff avers that ZAMAN admitted to plaintiff that ZAMAN rear ended GLOVER's vehicle. Additionally, pursuant to the police accident report, ZAMAN stated to the responding police officer at the scene that ZAMAN "rear ended" GLOVER's vehicle when GLOVER stopped short.

In opposition to plaintiff's motion for summary judgment, SHISMENOS and ZAMAN argue that plaintiff's motion should be denied as premature and that genuine issues of material fact exist which cannot be resolved until further discovery is completed. SHISMENOS and ZAMAN, as part of the motion in opposition, submitted a copy of the same police accident report but failed to submit an affidavit from either ZAMAN or a person with personal knowledge of the underlying facts denying plaintiff's allegations.

### Summary Judgment Standard

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in his favor.” (CPLR §3212, subd. (b); Friends of Animals v. Associated Fur Mfrs., 46 N.Y.2d 1065, 1067-1068; 390 N.E.2d 298, 416 N.Y.S.2d 790 (1979). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. Matter of Redemption Church of Christ v Williams, 84 A.D.2d 648, 649, 444 N.Y.S.2d 305 (3d Dept 1981); Greenburg v Manlon Realty, 43 A.D.2d 968, 969, 352 N.Y.S.2d 494 (2d Dept 1974); Winegrad v New York University Medical Center, 64 N.Y.2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 (1985). Additionally, the evidence submitted in support of the movant must be viewed in the light most favorable to the non-movant. Marine Midland Bank, N.A. v Dino & Artie’s Automatic Transmission Co., 168 A.D.2d 610, 563 N.Y.S.2d 449 (2d Dept 1990). “The drastic remedy of summary judgment is appropriate only where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact.” Id. At 610; accord Piccirillo v Piccirillo, 156 A.D.2d 748, 549 N.Y.S.2d 509 (2d Dept 1989).

To defeat a motion for summary judgment the opposing party “must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim ...; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient.” Zuckerman v. City of New York, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 (1980); see also, Alvarez v Prospect Hospital, 68 N.Y.2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 (1986); Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404, 144 N.E.2d 387, 165 N.Y.S.2d 498 (1957).

### Decision

“It is well settled that a rear-end collision with a stopped vehicle establishes a *prima facie* case of liability against the moving vehicle and imposes a duty of explanation on its driver.”

(Krakowska v. Niksa, 298 A.D.2d 561, 749 N.Y.S.2d 55 (2d Dept 2002); Jeremie v. Tong, 283 A.D.2d 461, 724 N.Y.S.2d 484 (2d Dept 2001); Leonard v. City of New York, 273 A.D.2d 205, 708 N.Y.S.2d 467 (2d Dept 2000). According to plaintiff’s uncontradicted affidavit, it is undisputed that ZAMAN’s vehicle hit GLOVER’s vehicle in the rear when Glover’s vehicle was stopped. Plaintiff’s affidavit avers, *inter alia*, that prior to the impact, GLOVER’s vehicle was stopped at the red light of the intersection of Canal and Allen Streets for approximately 3 seconds; GLOVER’s vehicle was completely within its lane; the weather was clear; the roads were dry; and visibility was excellent. Plaintiff further avers that ZAMAN admitted to plaintiff and to the responding police officer that ZAMAN rear ended Glover’s vehicle. ZAMAN’s action of hitting GLOVER’s vehicle in the rear constituted negligence as a matter of law (Scott v. Kass, 48 A.D.3d 785, 851 N.Y.S.2d 649 (2<sup>nd</sup> Dep’t 2008); Johnston v. Spoto, 47 A.D.3d 888, 850 N.Y.S.2d 204 (2d Dept 2008); Kimyagarov v. Nixon Taxi Corp, 45 A.D.3d 736, 846 N.Y.S.2d 309 (2d Dept 2007); Niyazov v. Bradford, 13 A.D.3d 501, 786 N.Y.S.2d 582 (2d Dept 2007).

Additionally, the police accident report contains an *admission* by ZAMAN stating that ZAMAN “was driving behind veh #1 [GLOVER’s vehicle] when it stopped short causing [ZAMAN ] to rear end veh #1.” (Kemenyash v. McGoey, 306 A.D.2d 516, 762 N.Y.S.2d 629 (2d Dept 2003); Niyazov v. Bradford, 13 A.D.3d 501). Moreover, ZAMAN’s admission “explained” why ZAMAN hit GLOVER’s vehicle in the rear; however, that explanation, even if accepted as true, is insufficient to raise a triable issue of fact. (Johnston, 47 A.D.3d at 889).

Further, ZAMAN “failed to submit an affidavit from [either himself] or a person with

personal knowledge of the facts either denying the plaintiff's allegations or offering a non-negligent explanation for the collision [and] the affirmation of [ZAMAN's] attorney [is] insufficient to raise a triable issue of fact." (Kimyagarov, 45 A.D.3d at 737; see Fenko v. Mealing, 43 A.D.3d 856, 841 N.Y.S.2d 378 (2<sup>nd</sup> Dep't 2007); Piltser v. Donna Lee Management Corp., 29 A.D.3d 973, 973 N.Y.S.2d 543 (2<sup>nd</sup> Dep' 2008).

Further, SHISMENOS' and ZAMAN's argument that plaintiff's motion should be denied as premature since discovery has not been completed is without merit. ZAMAN also had personal knowledge of the relevant facts leading up to the collision. Moreover, SHISMENOS and ZAMAN failed to offer any "evidentiary basis to suggest that discovery may lead to relevant evidence or that facts essential to opposing [plaintiff's] motion were exclusively within the knowledge and control of [plaintiff]" (CPLR §3212.(f); Kimyagarov, 45 A.D.3d at 737). "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion." (Fenko v. Mcaling, 43 A.D.3d 856; accord Lopez v. WS Distrib. Inc., 34 A.D.3d 759, 760, 825 N.Y.S.2d 516 (2d Dept 2006); see Kimyagarov, 45 A.D.3d at 737; Pina v. Merolla, 34 A.D.3d 663, 664, 824 N.Y.S.2d 411 (2<sup>nd</sup> Dep't 2006).

Therefore, based on the foregoing, the plaintiff's motion for summary judgment on liability is granted.

**Conclusion**

Accordingly, it is

**ORDERED**, that the plaintiff's motion for summary judgement on liability is granted. This constitutes the Decision and Order of the Court.

The Court finds that the defendants have failed to raise any triable issues of fact with respect to the above claims.

E N T E R  
*Bernadette Bayne*  
HON. BERNADETTE BAYNE  
J. S. C.  
**BERNADETTE BAYNE**  
**Supreme Court Justice**

FILED  
JAN 11 2011  
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