

**Grammas v Britton**

2019 NY Slip Op 34466(U)

January 23, 2019

Supreme Court, Orange County

Docket Number: Index No. EF007617-2017

Judge: Sandra B. Sciortino

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
BRITTANY S. GRAMMAS,  
Plaintiff,

DECISION AND ORDER

INDEX NO.: EF007617-2017  
Motion Date: 11/16/18  
Sequence No. 1

-against-

DAVID W. BRITTON and WANDA L. SCOTT,  
Defendants.

-----X  
SCIORTINO, J.

The following papers numbered 1 to 10 were considered in connection with the application of plaintiffs for summary judgment on the issue of liability:

| <u>PAPERS</u>                                       | <u>NUMBERED</u> |
|---|-----------------|
| Notice of Motion/Affirmation (Ianuzzi)/Exhibits 1-7 | 1 - 9           |
| Affirmation in Partial Opposition (Magliano)        | 10              |

**Background and Procedural History**

This personal injury action arises out of a motor vehicle accident that took place on June 6, 2016 on Interstate 84 in the Town of Walkill in Orange County. Plaintiff commenced this action by the electronic filing of a Summons and Complaint on September 25, 2017. Defendants interposed an Answer (Exhibit 2) filed November 17, 2017, and an Amended Answer filed May 22, 2018. Plaintiff's Verified Bill of Particulars (Exhibit 3) was served on or about December 14, 2017. Depositions of plaintiff and defendant Britton were held May 23, 2018. (Exhibits 6 & 7)

Plaintiff asserts that, on the day of the accident, she was traveling westbound on I-84 in the passing lane. According to his deposition testimony, defendant Britton was driving directly behind

her, perhaps 60 to 80 feet away,. (Exhibit 7 at page 19) Plaintiff observed a deer “fly up into the air” in the lane to her right after a non-party motorist struck the deer. (Exhibit 6 at 42) Plaintiff observed the car in front of her slowing to a complete stop. (Exhibit 6 at 54) She started to slow in order to stop and pulled off onto the left shoulder before stopping completely. (Exhibit 6 at 64) She was stopped for two to three seconds when she felt a violent strike in the rear of her car caused by the vehicle operated by defendant Britton. (Exhibit 6 at 64)

### Instant Motion

By Notice of Motion, plaintiff seeks partial summary judgment on the issue of liability on the grounds that her vehicle was struck in the rear by a vehicle owned and operated by defendants; thus establishing defendants’ *prima facie* negligence.

In support of the motion, plaintiff’s attorney submits the deposition testimony of his client showing that plaintiff was fully in the left shoulder and completely stopped for two to three seconds before the impact. Defendant Britton failed to maintain a safe distance between his vehicle and the one in front of him and failed to see what there was to be seen. These violations of Vehicle & Traffic Law section 1129[a] constitute *prima facie* negligence. No non-negligent explanation is offered; in fact, defendant acknowledges that he saw plaintiff’s brake lights when he was two or three car lengths behind her.

### Opposition

Defendants do not oppose the motion for partial summary judgment on liability, but ask that discovery continue, and that there be no order for an immediate trial on damages.

The Court has fully considered the submission before it.

### Discussion

Summary judgment is a drastic remedy, and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact. (*Piccirillo v. Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]) The function of the court on such a motion is issue finding, and not issue determination. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]) The court is not to engage in the weighing of evidence; rather, the Court's function is to determine whether "by no rational process could the trier of facts find for the non-moving party." (*Jastrzebski v. N. Shore Sch. Dist.*, 232 AD2d 677, 678 [2d Dept 1996])

A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the moving vehicle, in the absence of any negligence on the part of the plaintiff. (*Velazquez v. Denton Limo, Inc.*, 7 AD3d 787 [2d Dept 2004]; *Trombetta v. Cathone*, 59 AD3d 526 [2d Dept 2009]) In the matter at bar, plaintiff established her *prima facie* entitlement to summary judgment by the proffer of her sworn deposition testimony alleging that she had brought her car to a complete stop; remained stopped for two to three seconds and then was impacted by the vehicle driven by defendant Britton. Such a showing requires defendants to come forward with a non-negligent explanation for the accident. (*Velazquez*, citing *Shamah v. Richmond County Ambulance Serv.*, 279 AD2d 564 [2d Dept 2001])

Defendants not only failed to assert any such explanation, but consent to the finding.

On the basis of the foregoing, plaintiff's application for summary judgment on the issue of liability is granted.

The issue of remaining discovery, if any, will be addressed at the conference scheduled for

February 11, 2019 at 9:15 a.m.

This decision shall constitute the order of the Court.

Dated: January 23, 2019  
Goshen, New York

ENTER:



HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*