

**Oliver v Jejote**

2013 NY Slip Op 31506(U)

July 3, 2013

Sup Ct, New York County

Docket Number: 153063/12

Judge: Arlene P. Bluth

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ARLENE P. BLUTH

PRESENT:

PART 22

*Justice*

Index Number : 153063/2012  
 OLIVER, KENISHA  
 vs  
 JEJOTE, AHMED J  
 Sequence Number : 001  
 SUMMARY JUDGEMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 21, were read on this motion ~~to set~~ *for psj on liab + x motion for jt. trial*

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s). <u>1</u>
<i>Notice of X.M for jt trial</i> Answering Affidavits — Exhibits	No(s). <u>2</u>
<i>Reply</i> Replying Affidavits	No(s). <u>3</u>
<i>+ Aff in Opp to X.M</i>	


Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

*next cc - 9/9/13*

Dated: 7/3/13

  
 \_\_\_\_\_, J.S.C.  
 HON. ARLENE P. BLUTH

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

**SUPREME COURT OF THE STATE OF NY  
COUNTY OF NEW YORK: PART 22**

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Index No.:153063/12  
Mot Seq 001

**Kenisha Oliver and Sean Williams,**  
*Plaintiffs,*  
*-against-*

**DECISION/ORDER**

**Ahmed J. Jejote and Freedom Car Leasing,**  
*Defendants.*

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**HON. ARLENE P. BLUTH, JSC**

Plaintiff Oliver's motion for summary judgment against defendants of the issue of liability is granted; plaintiff Williams's motion for the same relief is denied. Defendants' cross-motion for an order directing that this case have joint discovery and be tried jointly with a Queens County case involving the same motor vehicle accident is granted.

In this action, plaintiffs (Oliver was a passenger and plaintiff Williams was the driver) seek damages for personal injuries resulting from a rear-end collision with a vehicle driven by defendant Jejote and owned by defendant Freedom Car Leasing which occurred on February 10, 2012 on Second Avenue and 117<sup>th</sup> Street in Manhattan. The plaintiffs in the Queens County action allege that their vehicle was struck in turn by the vehicle driven by Williams.

In order to prevail on its motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact. *Alvarez v Prospect Hospital*, 68 NY2d 320, 508 NYS2d 923 (1986). Once the movant demonstrates entitlement to judgment, the burden shifts to the opponent to rebut that prima facie showing. *Bethlehem Steel Corp. v Solow*, 51 NY2d 870, 872, 433 NYS2d 1015 (1980). In opposing such a motion, the party must lay bare its evidentiary proof.

Conclusory allegations are insufficient to defeat the motion; the opponent must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact.

*Zuckerman v City of New York*, 49 NY2d 557 at 562, 427 NYS2d 595 (1980).

In deciding the motion, the court must draw all reasonable inferences in favor of the non-moving party and must not decide credibility issues. (*Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 562 NYS2d 89 [1st Dept 1990], *lv. denied* 77 NY2d 939, 569 NYS2d 612 [1991]). As summary judgment is a drastic remedy which deprives a party of being heard, it should not be granted where there is any doubt as to the existence of a triable issue of fact (*Chemical Bank v West 95th Street Development Corp.*, 161 AD2d 218, 554 NYS2d 604 [1st Dept 1990]), or where the issue is even arguable or debatable (*Stone v Goodson*, 8 NY2d 8, 200 NYS2d 627 [1960]).

In support of the motion, plaintiff Oliver submits her affidavit wherein she states that she was a passenger in the car heading south on Second Avenue which was hit by defendants' vehicle (exh A). Accordingly, because she is "an innocent rear-seat passenger who cannot be found at fault under any version of how the accident occurred", plaintiff Oliver's motion for summary judgment on the issue of liability is granted. *See Mello v Narco Cab Corp.*, 105 AD3d 634, 963 NYS2d 581 (1<sup>st</sup> Dept 2013) citing *Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 723 NYS2d 163 (1st Dept 2001).

Additionally, in her affidavit, Ms. Oliver states that plaintiffs' vehicle came to a complete stop at a red light when it was hit by defendants' vehicle. It is well settled that a rear-end collision with a stopped vehicle creates a presumption that the operator of the moving vehicle was negligent (*Corrigan v Porter Cab Corp.*, 101 AD3d 471, 955 NYS2d 336 [1st Dept 2012],

*Agramonte v City of New York*, 288 AD2d 75, 732 NYS2d 414 [1st Dept 2001]). Therefore, through Ms. Oliver's affidavit, Mr. Williams made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that his stopped vehicle was rear-ended by defendant.

In opposition, defendants submit the affidavit of Mr. Jejote who states that just prior to the accident, Mr. Williams made a sudden lane change in front of him, and "cut him off" (exh D to cross-motion and opp); this narrative rebuts the inference of negligence by providing a non-negligent explanation for the collision (*Profita v Diaz*, 100 AD3d 481, 954 NYS2d 40 [1st Dept 2012]). Therefore, plaintiff Williams's motion for summary judgment on the issue of liability is denied.

Accordingly, it is hereby

**ORDERED** that plaintiff Oliver's motion for summary judgment on the issue of liability is granted only to the extent that she has no liability in the happening of this accident; and it is further

**ORDERED** that plaintiff Williams's motion for summary judgment on the issue of liability is denied; and it is further

**ORDERED** that within 30 days from entry of this order, counsel for defendants/cross-movants shall serve a certified copy of this order upon the Clerk of the Court of Queens County, who, upon payment of the proper fees, if any, shall transfer to the Clerk of the Supreme Court,

New York County, all of the papers on file in the action *Gary and Stephanie Stewart v Deline Oliver, Sean Williams, Freedom Car Leasing and Ahmed Jejote*, Supreme Court, Queens County, Index No. 13020/12; and it is further

**ORDERED** that the County Clerk of the Supreme Court, New York County, upon receipt of the Queens file and a copy of this order, shall, without further fee, assign an index number to the matter transferred pursuant to this order; and it is further

**ORDERED** that, within 10 days after obtaining a New York County index number, counsel for defendants/cross-movants shall serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office with proof that a Request for Judicial Intervention was previously filed in Queens County on December 24, 2012 (so that the Clerk shall not charge a fee); and it is further

**ORDERED** that the Clerk of Trial Support shall assign the transferred matter to Part 22; and it is further

**ORDERED** upon the payment of the appropriate calendar fees and the filing of separate notes of issue and statements of readiness in each of the above actions, the Clerk of the Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it is further

**ORDERED** that all matters of the trial, including the order of the right to open and close before the jury, shall be left to the trial judge; and it is further

**ORDERED** that all the parties are directed to appear for a joint DCM discovery conference on Monday, September 9, 2013, 80 Centre Street, at 9:30AM, Room 103.

This is the Decision and Order of the Court.

**Dated: July 3, 2013**  
**New York, New York**



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**HON. ARLENE P. BLUTH, JSC**