

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21485
C/hu

_____AD3d_____

Argued - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2008-04913

DECISION & ORDER

Briana Foti, etc., et al., plaintiffs-respondents, v
Fleetwood Ride, Inc., et al., appellants, City of
Mount Vernon, et al., defendants-respondents.

(Index No. 16296/06)

Barry & Associates, LLC, Plainview, N.Y. (Rhonda H. Barry of counsel), for
appellants.

Babaja & Guarneri, Yonkers, N.Y. (John A. Guarneri of counsel), for plaintiffs-
respondents.

Helen M. Blackwood, Corporation Counsel, Mount Vernon, N.Y. (Nichelle A.
Johnson of counsel), for defendants-respondents.

In an action to recover damages for personal injuries, etc., the defendants Fleetwood
Ride, Inc., and Anthony Frimpong appeal from an order of the Supreme Court, Westchester County
(Nastasi, J.), entered April 22, 2008, which denied their motion for summary judgment dismissing the
complaint and all cross claims insofar as asserted against them.

ORDERED that the order is affirmed, with one bill of costs.

A rear-end collision with a stopped or stopping vehicle creates a prima facie case of
negligence with respect to the operator of the moving vehicle, and imposes a duty on the operator
of the moving vehicle to come forward with an adequate, non-negligent explanation for the accident
(*see Hughes v Cai*, _____AD3d_____, 2008 NY Slip Op 07869 [2d Dept 2008]; *Arias v*

December 16, 2008

Page 1.

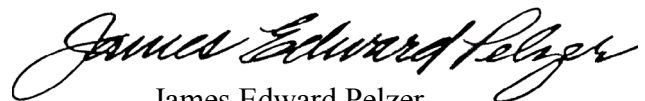
FOTI v FLEETWOOD RIDE, INC.

Rosario, 52 AD3d 551; *Harrington v Kern*, 52 AD3d 473; *Delayhaye v Caledonia Limo & Car Serv. Inc.*, 49 AD3d 588; *Klopchin v Masri*, 45 AD3d 737). “One of several nonnegligent explanations for a rear-end collision is a sudden stop of the lead vehicle” (*Chepel v Meyers*, 306 AD2d 235; see *Klopchin v Masri*, 45 AD3d 737).

In support of their motion for summary judgment, the appellants submitted deposition testimony which demonstrated that their stopped vehicle was struck in the rear by a vehicle owned and operated, respectively, by the defendants City of Mount Vernon and Lowell E. Anderson. However, the deposition testimony upon which the appellants relied also indicated that their vehicle came to an abrupt stop in the middle of the roadway after the driver was informed that he was headed in the wrong direction. Under these circumstances, there is an issue of fact as to whether the negligent operation of the appellants’ vehicle caused or contributed to the accident (see *Boockvor v Fischer*, _____AD3d_____, 2008 NY Slip Op 08438 [2d Dept 2008]; *Delayhaye v Caledonia Limo & Car Service, Inc.*, 49 AD3d 588; *Klopchin v Masri*, 45 AD3d 737; *Morrison v Montzoutsos*, 40 AD3d 717; *Brodie v Global Asset Recovery, Inc.*, 12 AD3d 390).

MASTRO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court