

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-01363

PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, CENTRA, AND PERADOTTO, JJ.

HELGA POREDA AND SIEGFRIED POREDA,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

AIMEE KROFSSIK, DEFENDANT-APPELLANT,
SEWKUMAR SOOKANAND AND GEMINI TRAFFIC
SALES, INC., DEFENDANTS-RESPONDENTS.

TREVETT CRISTO SALZER & ANDOLINA P.C., ROCHESTER (MARK M. CAMPANELLA
OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAW OFFICE OF JACOB P. WELCH, CORNING (JACOB P. WELCH OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

HISCOCK & BARCLAY, LLP, ROCHESTER (MARK T. WHITFORD, JR., OF COUNSEL),
FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Yates County (W. Patrick Falvey, A.J.), entered June 19, 2008 in a personal injury action. The order, insofar as appealed from, denied the motion of defendant Aimee Krofssik for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by plaintiff Helga Poreda in a motor vehicle accident. We reject the contention of Aimee Krofssik (defendant) that Supreme Court erred in denying her motion seeking summary judgment dismissing the complaint against her. According to plaintiffs, defendant was negligent, inter alia, by "walking out onto Route 54" after her vehicle slid partly off that road. Defendant met her initial burden on the motion by submitting her deposition testimony in which she stated that she did not enter the roadway (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). In opposition to the motion, however, plaintiffs submitted a prior statement of defendant that was inconsistent with that deposition testimony. Where the "version of the accident [set forth by a witness] is inconsistent with either his [or her] own previous account or that of another witness, a triable question of fact [sufficient to defeat the motion] may be presented" (*Rodriguez v New York City Hous. Auth.*, 194 AD2d 460, 462; *see 6243 Jericho Realty Corp. v AutoZone, Inc.*, 27 AD3d 447, 449; *Krampen v Foster*, 242 AD2d 913, 915), and we conclude on the record

before us that plaintiffs raised a triable question of fact.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court