

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the settlement of the lawsuit of Cynthia Martin v County of Westchester et al. in the amount of \$1,200,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court before the Honorable Joan B. Lefkowitz. The matter tentatively settled pending this Board's approval of a settlement in the amount of \$1,200,000.00, inclusive of attorney's fees. The proposed settlement was reached through Court ordered mediation with Anthony DiCaprio, Esq. with DiCaprio ADR, 64 Purchase Street, Rye, New York 10580.

Rappaport, Glass, Levine & Zullo, LLP 1355 Motor Parkway, Islandia, New York 11749, is representing the plaintiff, Cynthia Martin AKA Cynthia Gazick.

This matter arises out of a high speed rear end collision accident which occurred on September 25, 2017 on Interstate Route 684, at approximately 6:30 a.m. while the plaintiff and Police Officer David Sanchez were travelling to work. Officer Sanchez is a canine officer and was operating a County Police vehicle at the time of the accident. Plaintiff claims that while she was stopped in slowing traffic, she was struck in the rear by Officer Sanchez's vehicle. The plaintiff obtained summary judgment on the issue of liability and as a result the only issue before the Court is damages.

Plaintiff was taken by ambulance to Northern Westchester Hospital where she complained of pain in her cervical region, shoulder and lower back. She initially received chiropractic treatment and physical therapy and was referred to a spinal surgeon in July 2018 where she underwent an anterior cervical discectomy and fusion with placement of a cage and plate. She claims that the surgery has not remedied her complaints of pain and she was later diagnosed with cervical facet syndrome. She eventually underwent cervical denervation in June 2020 and again in April 2021. She continues to follow up with her pain management physician for chronic left sided radiculopathy. She continues to complain of pain and limited range of motion.

The Court has already determined that the County was negligent for striking the rear of plaintiff's vehicle. The plaintiff will further argue that the County's negligence was the proximate cause of her injuries, surgery and resulting pain and that future medical treatment will be required.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. The accompanying Act will authorize settlement of the lawsuit entitled of Cynthia Martin v County of Westchester et al, in the amount of \$1,200,000.00, Westchester County Supreme Court Index No. 65685/2018, inclusive of attorney's fees.

Your Committee has carefully considered the subject matter, the settlement proposal, the attached Act and recommends authorizing the County Attorney or his designee to settle the

lawsuit entitled Cynthia Martin v County of Westchester et al, in the amount of \$1,200,000.00,
Westchester County Supreme Court Index No. 65685/2018, inclusive of attorney's fees.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York

March 7, 2022

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Vedat Jadhvi

Nancy E. Bass

Nancy E. Bass

David B. Kelly - Phyjo

D.P. Kelly

William E. Kelly

William E. Kelly

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Budget & Appropriations

Law & Major Contracts

COMMITTEE ON

Dated: March 7, 2022
White Plains, New York

The following members attended the meeting remotely, as per Governor Cuomo's Executive Order 202.1 and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

COMMITTEES ON

<i>Mary Jane Skimchy</i>	<i>Mary Jane Skimchy</i>
<i>Catherine F. Parker</i>	<i>Catherine F. Parker</i>
	<i>David Q. Jablonski</i>
	<i>[Signature]</i>

Law & Major Contracts

Budget & Appropriations

ACT NO. -2022

AN ACT authorizing the County Attorney to settle the lawsuit of Cynthia Martin v County of Westchester, et al, Westchester County Supreme Court Index No. 65685, in the amount of \$1,200,000.00, inclusive of attorney's fees

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is authorized to settle the lawsuit of Cynthia Martin v. County of Westchester, et al, Westchester County Supreme Court Index No. 65685/2018, in the amount of \$1,200,000.00, inclusive of attorney's fees.

Section 2. The County Attorney or his designee is hereby authorized and empowered to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Lawsuit Settlement: C Martin NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND AIRPORT FUND SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 1,200,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: 6N Fund: 615 59 0697/4120 4280/05

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Settlement of Auto Liability Claim- Cynthia Martin A170029

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

Next Four Years: N/A

Prepared by: Jane Hogan-Felix

Title: Associate County Attorney

Department: Law

Date: January 27, 2022

Reviewed By: 

Dept Budget Director

Date: 1/31/22

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 WESTCHESTER**

CYNTHIA D. MARTIN,

Plaintiff,

DECISION/ORDER

-against-

INDEX NO. 65685/2018

COUNTY OF WESTCHESTER and WESTCHESTER
COUNTY POLICE DEPARTMENT,

**Motion Date 09/04/2019
Motion Seq. 1**

Defendants.

ECKER, J.

The following papers were read on the motion of plaintiff CYNTHIA D. MARTIN, (plaintiff) [Mot. Seq. 1], made pursuant to CPLR 3212, for an order granting plaintiff partial summary judgment as to liability as against defendants COUNTY OF WESTCHESTER and WESTCHESTER COUNTY POLICE DEPARTMENT (defendants):

PAPERS

Notice of Motion, Affirmation, Affirmation, Memorandum of Law, and Exhibits 1-3 and A-B
Affidavit in Opposition, Exhibit A-E
Affirmation in Reply

Upon the foregoing papers, the court determines as follows:

In this personal injury action, plaintiff alleges that she sustained serious injuries as a result of an automobile accident that occurred on September 25, 2017, at approximately 6:30 a.m. in the southbound left lane of Interstate 684 in the vicinity of Exit 8, Hardscrabble Road, in the Town of North Salem, New York. Plaintiff was driving her 2014 Hyundai SUV in the left lane on southbound I-684. Plaintiff alleges that she brought the vehicle to a complete stop due to traffic conditions. Plaintiff remained at a complete stop for 4-5 seconds when her car was suddenly and violently struck in the rear by defendants' police vehicle, being operated by Officer David Sanchez.

Prior to the moment of impact, defendants' police vehicle was not operating in emergency conditions nor did it have the lights or sirens on. The certified police report

states that plaintiff was hit in the rear and the defendants' vehicle "was operating in non-emergency conditions." [NYSCEF No. 14].

Plaintiff moves for partial summary judgment as to liability before discovery has been completed. In support of the motion, plaintiff submits a personal affidavit, an attorney affirmation, the pleadings, photographs, and the certified police report.¹

In opposition to plaintiff's motion for summary judgment on liability, defendants submit: the notice of claim; the 50-h Hearing transcript; the pleadings; and an affidavit from Officer Sanchez. In his affidavit Officer Sanchez avers, in relevant part, that at the time of the accident:

"I was traveling in the left hand lane when the vehicle in front of me came to a sudden, negligent and unexplained stop. Despite taking evasive measures I was unable to avoid a collision with the [plaintiff's vehicle]. There was no slowing traffic in front of [plaintiff's vehicle]. I had no warning or expectation that [plaintiff] was about to stop her vehicle. [Plaintiff's] actions were sudden, without warning and defied any apparent explanation." [NYSCEF No. 25].

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*Tsyganash v Auto Mall Fleet Management, Inc.*, 163 AD3d 1033 [2d Dept 2018]; see *Rodriguez v City of New York*, 31 NY3d 312 [2018]). A plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case (see *Tsyganash v Auto Mall Fleet Management, Inc.*, *supra*; *Rodriguez v City of New York*, *supra*). As such, a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle, requiring that operator to come forward with evidence of a nonnegligent explanation for the collision in order to rebut the inference of negligence (*Tsyganash v Auto Mall Fleet Management, Inc.*, *supra*; *Arslan v Costello*, 164 AD3d 1408 [2d Dept 2018]). Here, in support of the motion, plaintiff submits an affidavit wherein she avers that her vehicle was stopped, due to traffic, for 4-5 seconds when it was struck in the rear by defendants' vehicle. Thus, plaintiff establishes, *prima facie*, that the defendant driver's negligence was a proximate cause of the accident (*Arslan v Costello*, *supra*).

In opposition, defendants allege that, in essence, plaintiff came to a sudden and unexpected stop, and there was no traffic warranting plaintiff's action. Under the circumstances, triable issues of fact exist, *inter alia*, as to whether the defendant driver had a nonnegligent explanation for striking the plaintiff's vehicle in the rear (*Grant v Carrasco*, 165 AD3d 631 [2d Dept 2018]). As there has been no discovery as yet, the court finds it is premature to grant the motion, given the factual discrepancies (see

¹Of note, in the answer, defendants allege four affirmative defenses: Article 16; CPLR 4545; culpable conduct of third-person; and assumption of the risk. [NYSCEF No. 13].

Grant v Carrasco, supra; see generally Hawana v Carbuccia, 164 AD3d 563 [2d Dept 2018]; Betz v NYC Premier Properties, 38 AD3d 815 [2d Dept 2007][plaintiff raises issues warranting further discovery; summary judgment denied to defendants as premature]).

"Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue"(Alvarez v Prospect Hospital, 68 NY2d 329 [1986]; Andre v Pomeroy, 35 NY2d 361 [1974]). The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist (Stukas v Streiter, 83 AD3d 18, 23 [2d Dept 2011]). Accordingly, it is hereby

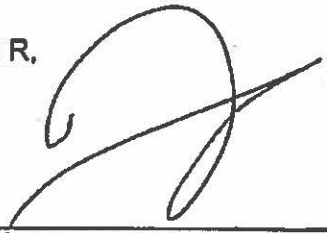
ORDERED that the motion by plaintiff CYNTHIA D. MARTIN [Mot. Seq. 1], made pursuant to CPLR 3212, for an order granting plaintiff partial summary judgment as to liability as against defendants COUNTY OF WESTCHESTER and WESTCHESTER COUNTY POLICE DEPARTMENT is denied, without prejudice to renewal upon the completion of discovery; and it is further

ORDERED that the parties shall appear at the previously scheduled Compliance Conference in the Court, Room 1600, on November 7, 2019, at 9:30 a.m.

The foregoing constitutes the Decision/Order of the court.

Dated: White Plains, New York
October 16 2019

ENTER,



HON. LAWRENCE H. ECKER, J.S.C.

Appearances

All parties via NYSCEF

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

D66563

L/htr

____AD3d____

Argued - March 22, 2021

HECTOR D. LASALLE, P.J.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ANGELA G. IANNACCI, JJ.

2019-13688

DECISION & ORDER

Cynthia D. Martin, appellant, v County of
Westchester, et al., respondents.

(Index No. 65685/18)

Rappaport, Glass, Levine & Zullo, LLP (Alexander J. Wulwick, New York, NY, of
counsel), for appellant.

John M. Nonna, County Attorney, White Plains, NY (Jason S. Whitehead of
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lawrence H. Ecker, J.), dated October 16, 2019. The order denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability, without prejudice to renew upon the completion of discovery.

ORDERED that the order is reversed, on the law, with costs, and that branch of the plaintiff's motion which was for summary judgment on the issue of liability is granted.

The plaintiff commenced this action against the defendants to recover damages for personal injuries that she allegedly sustained on September 25, 2017, when her stopped vehicle was struck in the rear by the defendants' vehicle on Interstate 684 in Westchester County. The Supreme Court denied that branch of the plaintiff's motion which was for summary judgment on the issue of liability, without prejudice to renew upon the completion of discovery. The plaintiff appeals.

"A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672; see *Arslan v Costello*,

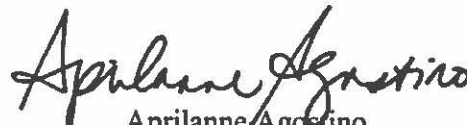
164 AD3d 1408, 1409). A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*see Tutrani v County of Suffolk*, 10 NY3d 906; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1034; *Bene v Dalessio*, 135 AD3d 679). Although a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, “vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows” (*Le Grand v Silberstein*, 123 AD3d 773, 775, quoting *Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 565).

Here, the plaintiff established her prima facie entitlement to judgment as a matter of law by demonstrating that her vehicle was stopped for the traffic condition ahead when it was struck in the rear by the defendants’ vehicle (*see Arslan v Costello*, 164 AD3d at 1409; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d at 1034). In opposition, the defendants failed to raise a triable issue of fact (*see Auguste v Jeter*, 167 AD3d 560; *Mallen v Su*, 67 AD3d 974, 975). Contrary to the defendants’ contention, that branch of the plaintiff’s motion which was for summary judgment on the issue of liability was not premature. The defendants failed to offer an evidentiary basis to suggest that discovery might lead to relevant evidence, or that facts essential to justify opposition to that branch of the motion were exclusively within the knowledge and control of the plaintiff (*see CPLR 3212[f]*; *Ordonez v Lee*, 177 AD3d 756, 757).

Accordingly, the Supreme Court should have granted that branch of the plaintiff’s motion which was for summary judgment on the issue of liability.

LASALLE, P.J., CHAMBERS, AUSTIN, and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court