

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----- X
ORAL CHARIAH,

Plaintiff,

against -

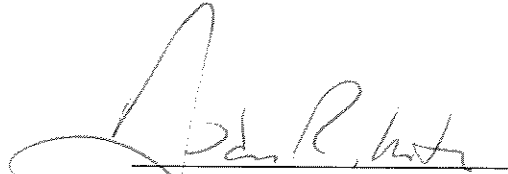
ROBERT ROBINSON, STEVE FRANCIS and SHERRY
FRANCIS,

Defendants.

----- X
COUNSELORS:

PLEASE TAKE NOTICE, that annexed is a true copy of an Order duly entered in the
office of the Clerk of the within named Court on November 16, 2009.

Dated: New York, New York
November 18, 2009



ROTH & ROTH, LLP

By: Audra R. Roth

Attorneys for Plaintiff

ORAL CHARIAH

192 Lexington Avenue, Suite 802

New York, New York 10016

(212) 425-1020

Our File No.: 5652

TO:
JAMES HIEBLER & ASSOCIATES
By: Antonio Marano, Esq.
Attorneys for Defendant
ROBERT ROBINSON
20 Main Street
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(516) 564-8000
LAW OFFICE OF ROBERT P. TUSA
By: Denise Foster, Esq.

Attorneys for Defendants
STEVE FRANCIS and SHERRY FRANCIS
1225 Franklin Avenue, Suite 500
Garden City, New York 11530
(516) 877-5753

ORIGINAL

b 

Short Form Order

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - PART TT-34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T :

HON. ROBERT J. McDONALD,
Justice

-----X

ORAL CHARIAH,

Plaintiff(s),

- against -

ROBERT ROBINSON, STEVE FRANCIS, and
SHERRY FRANCIS,

Defendant(s).

-----X

Index No.: 06718 / 2008

Motion: 11.05.09

Cal: 3

Sequence No. 2

2009 NOV 16 P 5:58
QUEENS COUNTY
CLERKS OFFICE
FILED

The following papers numbered 1 to 6 read on this motion by the plaintiff for leave to reargue the original motion for summary judgment against all defendants on the issue of liability and setting the matter down for a determination of damages pursuant to CPLR 3212 is resolved as follows:

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, and Exhibits.....	1 - 3
Affirmation in Opposition and Exhibit.....	4 - 5
Affirmation in Reply.....	6

Upon the foregoing papers it is ordered that this motion is determined as follows:

This is an action for personal injuries sustained in an motor vehicle accident on December 20, 2007 by the plaintiff, a front passenger in a vehicle operated by Steve Francis and owned by Sherry Francis with a vehicle owned and operated by Robert Robinson at the intersection of 133rd Avenue and Van Wyck Expressway Service Road in Queens County. It is alleged by the plaintiff that the Robinson vehicle made a left turn while the Francis vehicle proceeded through the intersection.

The plaintiff's motion for re-argument is based on the assertion that the plaintiff, a passenger in Francis vehicle, can not be liable.

The plaintiff's motion for re-argument is granted pursuant to CPLR 2221.

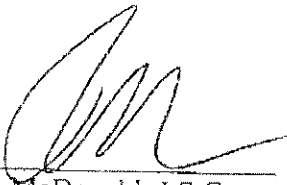
Summary judgment is a drastic remedy which will be granted solely when the party seeking summary judgment establishes that there are no triable issues of fact (*Alvarez v Prospect Hospital*, 68 NY2d 329; *Andre v Pomeroy*, 35 NY2d 361). The party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital, supra*; *Zuckerman v City of New York*, 49 NY2d 557).

Here, the plaintiff has demonstrated that there is no question of fact which would prevent him from obtaining summary judgment against the defendants. However, from the facts presented through the various exhibits and affidavits submitted there is a question as to the apportionment of liability between Robinson and Francis, the two drivers.

Accordingly, the plaintiff's motion for summary judgment on the issue of liability is granted based on the fact that the plaintiff was an innocent passenger (*Silberman v Surrey Cadillac Limousine Service, Inc.*, 109 AD2d 833). However, the percentage of liability for each of the defendants must be determined at the time of the trial of this matter.

So Ordered.

Dated: November 5, 2009



Robert J. McDonald, J.S.C.

QUEENS COUNTY
CLERK'S OFFICE
FILED
2009 NOV 16 P 5:56

AFFIDAVIT OF SERVICE

STATE OF NEW YORK
COUNTY OF NEW YORK ss.:

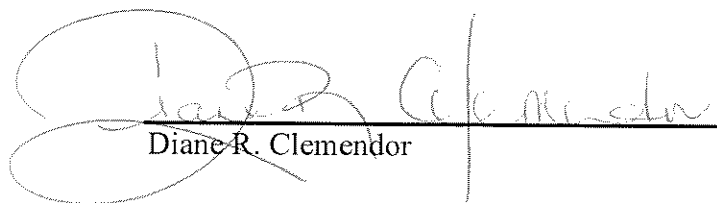
I, Diane R. Clemendor, being duly sworn, deposes and says:

I am over 18 years of age, I am not a party to the action, and I reside in the Kings County in the State of New York.

On, November 18, 2009, I served a true copy of the annexed, **Order with Notice of Entry**, by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

JAMES HIEBLER & ASSOCIATES
By: Antonio Marano, Esq.
Attorneys for Defendant
ROBERT ROBINSON
20 Main Street
Hempstead, New York 11550

LAW OFFICE OF ROBERT P. TUSA
By: Denise Foster, Esq.
Attorneys for Defendants
STEVE FRANCIS and SHERRY FRANCIS
1225 Franklin Avenue, Suite 500
Garden City, New York 11530


Diane R. Clemendor

Sworn to before me this 18th
day of November, 2009


Notary Public

Audra R. Roth
Notary Public, State of NY
No. 02HA6025379
Qualified in Nassau County
Comm. Expires August 28, 2010

Index #: 6718/2008

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COUNTY OF QUEENS

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ORAL CHARIAH,

Plaintiff,

-against-

ROBERT ROBINSON, STEVE FRANCIS and SHERRY
FRANCIS,

Defendants.

-----X

ORDER WITH NOTICE OF ENTRY

The below signature attests to the following papers: *ORDER WITH NOTICE OF ENTRY*

By: 

Audra R. Roth

ROTH & ROTH, LLP
Attorneys for Plaintiff
192 Lexington Avenue, Suite 802
New York, New York 10016
(212) 425-1020