

Exhibit: G. to Marked Pleadings
Hon. Justice Baisley's Short Form Order
dated September 17, 2007 (A1579-A1580)

A-1579

SHORT FORM ORDER

INDEX NO. 9991/2007

SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:

Hon. Paul J. Baisley, Jr.

CHRISTOPHER CICOLA,

Plaintiff,

-against-

COUNTY OF SUFFOLK and GLENN S.
MULLER,

Defendants,

ORIG. RETURN DATE: May 16, 2007
FINAL RETURN DATE: May 30, 2007
MTN. SEQ. #: 001-MG

PLTF'S ATTORNEY:

Rubin & Licatesi, P.C.
591 Stewart Avenue, 4th Floor
Garden City, New York 11530

DEFT'S ATTORNEY:

Christine Malafi, Esq.
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788-0099

Upon the following papers numbered 1 to 16 read on this motion for summary judgment: Notice of Motion and supporting papers 1 - 8; Affirmation in Opposition and supporting papers 9 - 14; Reply affirmation 15 - 16; it is,

ORDERED that the motion (001) by the plaintiff for summary judgment as to liability only is granted and this action shall continue only as to the issue of damages; and it is further

ORDERED that the parties are directed to appear pursuant to 22 NYCRR 202.8(f) for the preliminary conference already schedule for September 25, 2007 at the Supreme Court Annex, DCM Part, Room 203A, One Court Street, Riverhead, New York at 10:00 a.m.

This is a personal injury accident arising from a two-car motor vehicle accident on January 11, 2007. The defendant brings this motion pursuant to CPLR 3212 for summary judgment on the issue of liability only.

On a motion for summary judgment, the moving party has the burden of making a prima facie showing of entitlement to summary judgment as a matter of law and must offer sufficient evidence to show the absence of material issues of fact (*Winegrad v New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). If the moving party fails in meeting this burden, the motion must be denied. If, however, this burden is satisfied, then the burden shifts to the opposing party to establish the existence of material issues of fact requiring a trial (see *Zuckerman v City of New York, supra*).

Here, the plaintiff has clearly made a showing of entitlement to summary judgment as to liability. Included in support of this motion is the affidavit of the plaintiff in which he states that he had come to a full stop at a red light and was there ten to fifteen seconds waiting for it to turn green when he was struck in the rear by a Suffolk County Sheriff's car driven by the defendant, Deputy Sheriff Glenn S. Muller (hereinafter Muller).

In addition, the plaintiff has submitted in support of this motion a Police Accident Report (MV-104A) purportedly prepared by Muller and a Report of Motor Vehicle Accident (MV-104) signed by Muller, both of which indicate that Muller struck the plaintiff's vehicle in the rear when traffic had come to a stop.

The plaintiff, thus, has shown that he was without fault in the accident and that the defendant had no reasonable non-negligent explanation for his actions (see *Piltzer v Donna Lee Mgt. Corp.*, 29 AD3d 973, 816 NYS2d 543 [2d Dept 2006]); *Lopez v Minot*, 258 AD2d 564, 685 NYS2d 469 [2d Dept 1999]).

In view of the plaintiff showing a prima facie entitlement to summary judgment, the burden now shifts to the defendant to establish the existence of material issues of fact requiring a trial (see *Zuckerman v City of New York, supra*).

In opposition, the defendants submit an affidavit from Muller which provides a laundry list of boiler plate negligent acts which he claims he did not commit but which provides absolutely no non-negligent explanation for his colliding with the rear of the plaintiff's vehicle.

Although the defendants ask for the opportunity to at least conduct discovery, the court notes that it is the burden of the defendants to come forward with a non-negligent explanation for the collision with the rear of the plaintiff's vehicle (see *Lopez v Minot*, 258 AD2d 564, 685 NYS2d 469 [2d Dept 1999]) and it would clearly be the defendants and particularly the defendant driver who would be the one to have knowledge of any possible non-negligent explanation for his actions. In the absence of any such explanation from the defendant driver, the plaintiff is entitled to summary judgment on the issue of liability (see *Piltzer v Donna Lee Mgt. Corp.*, 29 AD3d 973, 816 NYS2d 543 [2d Dept 2006]).

This decision constitutes the order of the court.

Dated: September 17, 2007


HON. PAUL J. BAISLEY, JR. J.S.C.