

2012 WL 10647111 (N.Y.Sup.) (Trial Order)  
Supreme Court, New York.  
Dutchess County

Patricia TELESKO and Ferdinando Telesco, Plaintiffs,  
v.  
Kyle BLACKMAN and Kurt Blackman, Defendants.

No. 7343/2010.  
April 10, 2012.

**Decision and Order**

Hon. Christine A. Sproat, Supreme Court Justice.

\*1 Plaintiffs Patricia and Ferdinando Telesco move for an order, pursuant to CPLR 3212, granting them summary judgment on the issue of liability.

The following papers were read:

Notice of Motion - Plaintiffs' Memorandum of Law - Affidavit of Patricia Telesco - Annexed Exhibits	1-4
Jessica J. Glass, Esq.'s Affirmation in Opposition - Annexed Exhibits	5-6
Reply Affirmation of Michael A. Fakhoury, Esq. - Affidavit of Service	7-8

Upon the foregoing papers it is hereby ORDERED that the plaintiffs' motion for summary judgment on the issue of liability is denied.

The instant personal injury action arises out of a motor vehicle accident which occurred on April 30, 2010 at approximately 8:30 a.m. on State Route 55 in the Town of LaGrange. Plaintiff Patricia Telesco's vehicle was traveling in an easterly direction on Route 55 and defendant Kyle Blackman's vehicle was traveling in a westerly direction on Route 55. It is alleged that defendant Kyle Blackman caused his vehicle to cross over the double yellow line into plaintiff Patricia Telesco's lane of travel resulting in an impact between the two vehicles. In the absence of a non-negligent explanation by the defendant, plaintiff would be entitled to summary judgment on the issue of liability in this "crossover" accident. However, according to the sworn testimony of defendant Kyle Blackman, a yellow-jacket bee had entered his vehicle seconds before the accident. (See, *Examination Before Trial Testimony of Kyle Blackman*.) According to the defendant, the bee was hovering around his head causing him to remove one of his hands from the steering wheel and to swat at the bee to get it to fly out of an open window. The collision with plaintiff's vehicle ensued. (See, *Examination Before Trial Testimony of Kyle Blackman and Affidavit of Kyle Blackman*.) The plaintiffs made a *prima facie* showing of entitlement to judgment as a matter of law, but the defendants raised a triable issue of fact as to whether the distraction of the yellow-jacket bee provides a non-negligent explanation for the accident. (See, for e.g., *Gordon v. County of Ontario*, 11 AD3d 891 (4th Dept., 2004); *Evangelou v. Ford*, 167 AD2d 760 (3rd Dept., 1990); *Lussan v. Grain Dealers Mutual Insurance Company*, 280 F.2d 491 (1960); *Heerman v. Burke*, 266 F.2d 935 (1959); *American Law Reports*, 73 A.L.R.2d 1214.) Accordingly, the plaintiffs' motion for summary judgment must be denied.

\*2 This matter is adjourned to December 11, 2012 at 9:30 a.m. for Jury Selection.

So Ordered.

Dated: April 10, 2012

Poughkeepsie, New York

<<signature>>

HON. CHRISTINE A. SPROAT

Supreme Court Justice

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