

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

1240

CA 16-00653

PRESENT: PERADOTTO, J.P., CARNI, CURRAN, TROUTMAN, AND SCUDDER, JJ.

SYDNEY H. RAIT, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MATTHEW D. SHEEHAN AND SMITH & NEPHEW, INC.,
DEFENDANTS-RESPONDENTS.

LEWIS & LEWIS, P.C., BUFFALO (DAVID M. BLOCK OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

LAW OFFICES OF JOHN WALLACE, BUFFALO (LEO T. FABRIZI OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (James H. Dillon, J.), entered June 30, 2015. The order granted the motion of defendants for summary judgment and dismissed the amended complaint.

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

Memorandum: Plaintiff commenced this action to recover damages for injuries that she allegedly sustained in a motor vehicle accident in the Town of Amherst. The accident occurred when a vehicle driven by Matthew D. Sheehan (defendant) struck the driver's side of plaintiff's vehicle while plaintiff was attempting to make a left turn from a parking lot onto Sheridan Drive.

We conclude that Supreme Court properly granted defendants' motion for summary judgment dismissing the amended complaint. Defendants met their initial burden " 'by establishing that [defendant] was driving within the speed limit, that he did not have time to avoid the collision, and that plaintiff was entering the roadway from a parking lot' " (*Johnson v Time Warner Entertainment*, 115 AD3d 1295, 1295; see generally Vehicle and Traffic Law § 1143), and in response plaintiff failed to raise an issue of fact (see generally *Zuckerman v City of New York*, 49 NY2d 557, 562). In particular, plaintiff failed to raise an issue of fact whether defendant was traveling in excess of a reasonable speed under the circumstances by her submission of a witness statement that defendant's "speed was at least" that of the posted speed limit (see generally § 1180 [a]). Contrary to plaintiff's contention, the fact that defendant may have been traveling at such a speed "is inconsequential inasmuch as there is no indication that [he] could have avoided the accident even if [he] had been traveling at a speed

. . . below the posted speed limit" (*Daniels v Rumsey*, 111 AD3d 1408, 1410; see *Heltz v Barratt*, 115 AD3d 1298, 1299, *affd* 24 NY3d 1185).

Entered: December 23, 2016

Frances E. Cafarell
Clerk of the Court