

24-SAH-224 DTF-A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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RICHARD E. SZOSTAK and SHEILA SZOSTAK,

Index No.: 537877/2023

Plaintiff,

-against-

**VERIFIED ANSWER  
with CROSS-CLAIMS**

KEVIN STOCKS JR., and SOHEIR E. HABIB,

Defendants.

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Defendant, SOHEIR E. HABIB, by his attorneys, McCABE, COLLINS, McGEOUGH, FOWLER, LEVINE & NOGAN, LLP, answering the Verified Complaint herein, upon information and belief, alleges:

**ANSWER TO FIRST CAUSE OF ACTION**

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs "1, 2, 3, 4, 9 and 11" and each and every part thereof.

SECOND: Defendant denies the allegations set forth in paragraphs "10 and 12" and each and every part thereof.

**ANSWER TO SECOND CAUSE OF ACTION**

THIRD: Defendants repeat and reiterate each and every denial in answer to paragraphs numbered "1" through "12" of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "13" and each and every part thereof.

FOURTH: Defendant denies the allegations set forth in paragraphs "14, 15, 16, 17, 19 and 20" and respectfully refer all questions of law to the determination of the trial court.

FIFTH: Defendant denies having knowledge or information sufficient to form a belief set forth in paragraphs "18" and respectfully refer all questions of law to the determination of the trial court.

**ANSWER TO THIRD CAUSE OF ACTION**

SIXTH: Defendants repeat and reiterate each and every denial in answer to paragraphs numbered "13" through "20" of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "21" and each and every part thereof.

SEVENTH: Defendant denies the allegations set forth in paragraphs "24" and each and every part thereof.

EIGHTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs "22, and 23" and respectfully refer all questions of law to the determination of the trial court.

NINTH: Defendant denies the allegations set forth in paragraphs "25" and respectfully refer all questions of law to the determination of the trial court.

**ANSWER TO FOURTH CAUSE OF ACTION**

TENTH: Defendants repeat and reiterate each and every denial in answer to paragraphs numbered "21" through "25" of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "26" and each and every part thereof.

ELEVENTH: Defendant denies the allegations set forth in paragraphs "28" and respectfully refer all questions of law to the determination of the trial court.

TWELFTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs "27" and respectfully refer all questions of law to the determination of the trial court.

THIRTEENTH: Defendant denies the allegations set forth in paragraphs "29" and

respectfully refer all questions of law to the determination of the trial court.

**ANSWER TO FIFTH CAUSE OF ACTION**

FOURTEENTH: Defendants repeat and reiterate each and every denial in answer to paragraphs numbered “26” through “29” of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered “30” and each and every part thereof.

FIFTEENTH: Defendant denies the allegations set forth in paragraphs “33” and respectfully refer all questions of law to the determination of the trial court.

SIXTEENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs “31 and 32” and respectfully refer all questions of law to the determination of the trial court.

SEVENTEENTH: Defendant denies the allegations set forth in paragraphs “34” and respectfully refer all questions of law to the determination of the trial court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

EIGHTEENTH: The plaintiff did not sustain serious injuries as defined by Section 5102 of the Insurance Law of the State of New York and plaintiff’s exclusive remedy, therefore, is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

NINETEENTH: The plaintiff’s sole and exclusive remedy is confined and limited to benefits and provisions of Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

TWENTIETH: The plaintiff’s causes of action are barred by Article 51, Section 5104 of the Insurance Law of the State of New York.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

TWENTY-FIRST: The plaintiff was guilty of culpable conduct, including contributory negligence and/or assumption of risk, and should an award be made to the plaintiff, same should be diminished in the proportion which the culpable conduct and/or contributory negligence and/or assumption of risk attributable to the plaintiff bears to the culpable conduct and/or negligence which caused the damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

TWENTY-SECOND: That if the plaintiff sustained injuries at the time and place as alleged in the complaint, said injuries, if any, were caused and/or exacerbated by the plaintiff's failure to use the seat belts installed in the motor vehicle in which they were riding, and by otherwise failing to comply with the Vehicle and Traffic Law Section 1229-C and defendants will seek exemption from and/or mitigation of damages at the time of trial.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

TWENTY-THIRD: In the event that plaintiff recovers judgment against this answering defendant and it is determined that plaintiff's damages were caused in whole or in part by two or more joint tortfeasors, then defendant's liability herein for non-economic loss may not exceed its equitable share of said damages in accordance with its relative culpability, as provided by Section 1601 of the CPLR.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

TWENTY-FOURTH: This Court lacks jurisdiction of the person of the defendant due to failure to properly serve her.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

TWENTY-FIFTH: Plaintiff's recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with CPLR Section 4545.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

TWENTY-SIXTH: Plaintiff failed to take all reasonable measures to reduce, mitigate and/or minimize the damages alleged.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

TWENTY-SEVENTH: Plaintiff did assume the risk of any and all injuries/damages he alleges to have incurred.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

TWENTY-EIGHTH: The undersigned defendant(s) action(s) in connection with the matters alleged in the Complaint were at all times reasonable under the circumstances and/or the product of an emergency situation that was due to environmental, mechanical, human or animal causes to which the emergency doctrine applies.

**AS A FOR A TWELFTH AFFIRMATIVE DEFENSE**

TWENTY-NINTH: These defendants are entitled to a set-off if any tortfeasor has or will settle with plaintiff pursuant to General Obligations Law §15-108.

**AS AND FOR A CROSS-CLAIM AGAINST  
CO-DEFENDANT, KEVIN STOCKS, JR  
DEFENDANT, SOHEIR E. HABIB,  
RESPECTFULLY SHOWS TO THIS COURT AND ALLEGES:**

THIRTIETH: That if plaintiff was caused damages, as alleged in the Complaint through negligence other than plaintiff's own negligence, carelessness and recklessness, said damages were sustained due to the primary and active, negligent, careless and reckless acts of omission or commission of the co-defendant, KEVIN STOCKS JR., with the negligence, if any, of this answering defendant, SOHEIR E. HABIB, being secondary and/or derivative only.

THIRTY-FIRST: Further, if plaintiff would recover judgment against this defendant, SOHEIR E. HABIB, then co-defendant, KEVIN STOCKS JR., shall be liable to defendant, SOHEIR E. HABIB, for the full amount of said judgment or on the basis of any apportionment of

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