SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 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**

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STATE FARM FIRE & CASUALTY COMPANY a/s/o BRANDON CAMERON,

Plaintiff,

- against -

PAGE TAXI CORP. and JACEK KOCHANOWSKI,

Defendants.

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Index No.: 21447/2009

Motion Date: 03/26/12

Motion No.: 40

Motion Seq.: 1

The following papers numbered 1 to 13 were read on this motion by defendants Page Taxi Corp and Jack Kochanowski for an order pursuant to CPLR 3212(b) granting summary judgment in favor of defendants dismissing plaintiff's complaint:

| | Papers |
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| Notice of Motion-Affidavits-Exhibits | 1 - 6 |
| Defendant's Affirmation in Opposition-Affidavits | 7 - 10 |
| Plaintiffs' Reply Affirmation | 11 -13 |

This is an action by State Farm Fire & Casualty Company to recover for property damage sustained by the vehicle owned by plaintiff's subrogor, Brandon Cameron. The vehicle was damaged as the result of a three-car motor vehicle accident that occurred on February 8, 2008 on the upper level of the northbound Manhattan Bridge, Kings County, New York. The accident occurred when the defendants' taxicab was struck in the rear by the vehicle operated by Cameron. As a result of the impact the taxicab was propelled into the rear of a bus.

The plaintiff commenced this action by the filing of a summons and complaint on August 11, 2009. Plaintiff seeks recovery for monies paid to its subrogor for damages sustained as a result of defendants' negligence in the operation of their motor vehicle. In the complaint, plaintiff asserts that the defendant driver was negligent in improperly changing lanes across a double white line and striking the Cameron vehicle. Issue was joined by service of defendants' verified answer dated August 17, 2009. Defendants now move for an order pursuant to CPLR 3212(b), granting summary judgment dismissing the plaintiff's complaint on the ground that Cameron's vehicle negligently struck the rear of the defendants' taxicab and as such the defendants are not liable for the damage to the Cameron vehicle.

In support of the motion, defendants submit an affidavit from counsel, Brian J. Matthews, Esq; a copy of the pleadings; and a copy of the transcript of the examinations before trial of defendant Jacek Kochanowski and plaintiff's subrogor, Brandon Cameron.

In his examination before trial taken on March 30, 2009, Mr. Kochanowski testified that on the date of the accident, February 8, 2008, he was a taxi driver employed by Page Taxi Corp. He testified that he was coming from Brooklyn and was traveling to Manhattan on the upper level of the Manhattan Bridge. He was driving in the left lane at a rate of 20-25 miles per hour. Subsequently he slowed his vehicle to 15-20 miles per hour, put on his right turn signal and moved his vehicle into the right lane. He stated that the closest car in the right lane when he changed lanes was 5 - 6 car lengths away. He stated that 5 - 10 seconds after he changed lanes, his vehicle was struck in the rear by the vehicle driven by Brandon Cameron. He stated that the impact was very heavy and caused his vehicle to hit the right side of the bridge. After hitting the bridge he lost control of his vehicle which then moved to the left and came into contact with the rear of a bus that had been driving in the left lane.

Brandon Cameron was also deposed on March 30, 2009. He stated that at the time of accident he had taken the Manhattan Bridge heading towards Manhattan to go to a restaurant. He was operating his vehicle in the right hand lane at a rate of 35 miles per hour. He observed the defendants' taxicab in the left lane traveling at a rate of 5 - 10 miles per hour. According to Mr. Cameron, when the taxi was less than one car length away in the left lane, the taxi attempted to change lanes directly in front of his vehicle without putting on his right turn signal. Because the taxi cut him off, his vehicle struck the taxicab

while the cab was partially in the right lane and partially in the left lane. When the police arrived on the scene he told the responding officer that he was traveling in the right lane when the yellow cab changed lanes in front of him and he hit the cab in the rear.

Defendants' counsel contends that the accident was caused solely by the negligence of Mr. Cameron in that he failed to keep a safe distance and failed to safely stop his vehicle prior to rear-ending the plaintiff's vehicle. Counsel asserts that Mr. Kochanowski testified that prior to changing lanes he saw plaintiff's vehicle 5 - 6 car lengths behind him, signaled, checked his mirrors, and safely changed to the right lane. The taxi driver stated that he was driving in the right lane for 10 seconds before his vehicle was struck in the rear. Counsel asserts that when a rear end collision occurs, such collision is sufficient to create a prima facie case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle. Counsel contends, therefore, that the defendants are entitled to summary judgment dismissing the plaintiff's complaint because Mr. Cameron was solely responsible for causing the accident while the taxi driver, Mr. Kochanowski, was free from culpable conduct.

In opposition to the motion, plaintiff's counsel, Stuart D. Markowitz, Esq., contends that Mr. Cameron's deposition testimony presents a sufficient non-negligent explanation as to how and why the rear-end collision occurred. Counsel contends that evidence that the taxicab made a sudden lane change directly in front of Cameron's vehicle, without signaling, is sufficient to rebut the inference of negligence by providing a nonnegligent explanation for the collision (see Ortiz v Hub Truck rental Corp., 82 AD3d 725 [2d Dept. 2011]) and is sufficient to show that the defendant may also have been culpable for causing the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Abott v Picture East, Inc., 78 AD3d 869 [2d Dept. 2010]; Oguzturk v General Electric Company, 65 AD3d 1110 [2d Dept. 2009]).

The police accident report which is based upon statements of the drivers, states that Mr. Kochanowski was attempting to overtake the bus which was traveling in front of him in the left lane by passing the bus in the right lane causing him to strike the Cameron vehicle and the bus. The police report indicates that Kochanowski was cited for "Aggressive Driving/Road Rage." Counsel contends that the evidence demonstrates that defendants' vehicle, without signaling, improperly and illegally crossed into the right lane and cut off the Cameron vehicle when it was not safe to do so. Counsel claims that Cameron testified that he tried to

stop his vehicle but was unable to stop in time hitting the rear of the taxi cab. Counsel claims the accident was caused solely by defendants aggressive driving and violation of VTL § 1128 which prohibits the crossing of two solid white lines separating traffic and by changing lanes when it was not safe to do so.

In reply, the defendant objects to the submission of the photograph of the bridge as submitted without proper foundation. Counsel also objects to the submission of the police report as it has not been certified.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

"When the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision with another vehicle creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v. New York City Transit Authority, 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]).

Here, Kochanowski stated that his vehicle had completely changed lanes and he was operating in the right lane when his moving vehicle was struck from behind by Cameron's vehicle. Thus, the defendant satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of liability by demonstrating that his vehicle was struck in the rear by the vehicle operated by plaintiff(see Volpe v Limoncelli,74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 ad3d 1154;[2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to plaintiff to raise a triable issue of fact as to whether defendant was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk,

57 AD3d 478 [2d Dept. 2007]).

Viewing this evidence in the light most favorable to the non-moving party and affording the plaintiff the benefit of every favorable inference that can be drawn from the evidence, this court finds that the plaintiff's deposition testimony stating that the defendant suddenly changed lanes in front of him and cut him off in moving traffic was sufficient to raise a triable issue of fact as to the proximate cause of the subject accident and was sufficient to provide a non-negligent explanation for the rear-end collision (see Scheker v Brown, 85 AD3d 1007 [2d Dept. 2011] [the defendant raised a triable issue of fact as to whether she had a non-negligent explanation for the collision stating that the plaintiff driver suddenly changed lanes, directly in front of her vehicle, without signaling, and then slowed down]; Ortiz v Hub Truck Rental Corp.,82 AD3d 725 [2d Dept. 2011][evidence that a plaintiff's vehicle made a sudden lane change directly in front of a defendant's vehicle, forcing that defendant to stop suddenly, is sufficient to rebut the inference of negligence]; Reitz v. Seagate Trucking, Inc., 71 AD3d 975 [2d Dept. 2010][the defendants rebutted the inference of negligence by adducing evidence that the plaintiffs' vehicle suddenly changed lanes directly in front of their vehicle, forcing the defendant to stop suddenly]; Oguzturk v. General Elec. Co., 65 AD3d 1110 [2d Dept. 2009][defendant's explanation, that the accident occurred after the plaintiff's vehicle suddenly, and without signaling, moved from the center lane into the left lane directly in front of defendant's path and then slowed down, raised a triable issue of fact sufficient to defeat the plaintiffs' motion]; also see Connors v Flaherty, 32 AD3d 891 [2d Dept. 2006]; Briceno v Milbry, 16 AD3d 448 [2d Dept. 2005]).

Accordingly, as the evidence in the record demonstrates that there are triable issues of fact as to whether defendant may have borne comparative fault for the causation of the accident and for the reasons set forth above, it is hereby

ORDERED, that the defendants' motion for summary judgment dismissing the plaintiff's complaint is denied.

Dated: April 9, 2012
Long Island City, N.Y.

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ROBERT J. MCDONALD
J.S.C.