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

- x

IVAN JIMENEZ,

Plaintiff,

- against -

IJAZ AHMAD and ADIBA AKMAL,

Defendants.

Index No.: 18159/2011

Motion Date: 11/15/12

Motion No.: 64

Motion Seq.: 4

- x

The following papers numbered 1 to 12 were read on this motion by plaintiff, IVAN JIMENEZ, for an order pursuant to CPLR 3212(b) granting plaintiff partial summary judgment on the issue of liability and setting this matter down for a trial on damages:

	Papers Numbered
Notice of Motion-Affidavits-Exhibits	1 - 6
Defendant's Affirmation in Opposition	7 - 9
Reply Affirmation	10 - 12

In this negligence action, the plaintiff, Ivan Jimenez, seeks to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident that occurred on March 18, 2011 between the plaintiff's vehicle and the vehicle owned by Ijaz Ahmad and operated by defendant Adiba Akmal. The accident took place on Coney Island Avenue between Avenue U and Avenue T, Kings County, New York. At the time of the accident, plaintiff, Ivan Jimenez, was proceeding on Coney Island Avenue when he stopped his vehicle between Avenues U and T to allow another vehicle to parallel park. While stopped his vehicle was allegedly struck in the rear by the vehicle operated by defendant Akmal. The plaintiff allegedly sustained serious injuries as a result of the impact.

The plaintiff commenced this action by filing a summons and complaint on August 1, 2011. Issue was joined by service of defendants' verified answer dated August 25, 2011. Plaintiff now moves for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting this matter down for a trial on damages.

In support of the motion, the plaintiff submits an affirmation from counsel, Jessica B. Blake, Esq., a copy of the pleadings; a copy of the plaintiff's verified bill of particulars, an uncertified copy of the police accident report (MV-104); and a copy of the transcript of the examinations before trial of the plaintiff and of defendant Akmal.

In the police accident report the police officer, who did not witness the accident, describes the accident as follows:

"At t/p/o Veh #1 (defendant) states that she was driving n/b on Coney Island Avenue when veh #2(plaintiff) came to a stop causing Veh #1 to rear-end Veh #2. Veh #2 (plaintiff) states he stopped because another car was parking and then Veh #1 rear-ended him."

In his examination before trial, the plaintiff, age 42, testified that on the day of the accident he was working as a taxi cab driver and driving a Lincoln Town car for a company known as Guadalupana Car Service. He stated that he had gotten off the Belt parkway in Brooklyn and was traveling northbound on Coney Island Avenue. He had crossed over Avenue U and was in the middle of the block prior to reaching Avenue T when he stopped to allow a car in front of him to back into a parking space. When he first observed the vehicle in front of him it was at an angle. He stated that he was completely stopped for five or six seconds in the right lane when his vehicle was struck in the rear by the vehicle being operated by the defendant. He states that because of traffic he was not able to proceed into the left lane, around the vehicle that was parking. After the accident, he observed damage to the rear of his vehicle and he observed significant damage to the front end of the defendants' vehicle. When the police arrived he told the officer at the scene that the defendants' vehicle came very quickly from behind at a rate of 35- 40 miles per hour and struck his vehicle in the rear.

Defendant Adiba Akmal, age 49, testified at an examination before trial on April 25, 2012. She stated that she works as a secretary for her cousin, a pulmunologist in Brooklyn. On the date of the accident she was driving her vehicle in Brooklyn,

accompanied by her friend and her two children. They were headed to a get together at a restaurant in Coney Island. She testified that she had taken the Belt Parkway to Coney Island Avenue. She stated that immediately before the accident she was driving at approximately 15 - 20 miles per hour in the right lane. She was driving behind the plaintiff's vehicle and observed that it stopped. She stated that when the plaintiff's vehicle in front of her stopped, her vehicle was very close to it and that is why she struck plaintiff's vehicle in the rear. She stated that she thought the car in front was moving but suddenly realized that the car was not moving. She stated that she applied her brake but it took time for her car to stop resulting in her hitting the rear of the plaintiff's vehicle. She stated that she did not see a car attempting to park in front of the plaintiff's vehicle. She observed significant damage to the front of her vehicle. She testified that after the accident she apologized to the plaintiff.

Plaintiff's counsel contends that the accident was caused solely by the negligence of the defendant driver in that her vehicle was traveling too closely in violation of VTL § 1129 and that the defendant driver failed to bring her vehicle to a safe stop prior to rear-ending the plaintiff's vehicle. Counsel contends, therefore, that the plaintiff is entitled to partial summary judgment as to liability because the defendant driver was solely responsible for causing the accident while the plaintiff driver was free from culpable conduct.

In opposition to the motion, defendant's counsel, Peter Maiorino, Esq., states that the plaintiff's motion must be denied, as there are conflicting versions of how the accident took place, and the defendant has proffered a non-negligent explanation for the rear-end collision. Counsel asserts that defendant's deposition testimony raises material questions of fact as to why plaintiff's vehicle was not pushed into the car that was parking in front of it. He asserts that the defendant testified that she did not even see a vehicle parking in front of the plaintiff's vehicle. Counsel also states that the deposition testimony indicates that plaintiff's vehicle came to an abrupt stop without any warning. Counsel also asserts that as defendant states that the plaintiff's vehicle suddenly and unexpectedly stopped short without signaling that she has offered a non-negligent explanation for the rear end collision (citing Chepel v Meyers, 306 AD2d 235 [2d Dept. 2003]; Mundo v City of Yonkers, 249AD2d 522 [2d Dept. 1998]).

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 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 AD2d 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, plaintiff testified that his vehicle was completely stopped for 5 - 6 seconds on Coney Island Avenue when it was struck from behind by the defendant's vehicle. The defendant also concedes that she believed that the plaintiff's vehicle was moving but by the time she realized he was stopped her vehicle was too close to safely stop and she struck the plaintiff's vehicle from behind. She also testified that she observed another vehicle stopped in front of the plaintiff's vehicle prior to the accident. Thus, the plaintiff satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (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 defendant to raise a triable issue of fact as to whether plaintiff 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]). This Court finds that the defendant failed to provide evidence as to a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp, 58 AD3d 802 [2d Dept. 2009]; Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). Although defendant maintains that the accident was the result of plaintiff braking or stopping suddenly without

warning for no apparent reason this does not explain her failure to maintain a safe distance from the vehicle in front of her (see Dicturel v Dukureh,71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009]). The defendant's argument that the plaintiffs' vehicle may have stopped short is not sufficient to provide a non-negligent explanation for the rear-end collision (see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011][the mere assertion that the respondents' (vehicle) came to a sudden stop while traveling in heavy traffic was insufficient to raise a triable issue of fact]; Staton v Ilic, 69 AD3d 606 [2d Dept. 2010]; Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]). A bare claim that the driver of the lead vehicle suddenly stopped, standing alone, is insufficient to rebut the presumption of negligence (see Ramirez v Konstanzer, 61 AD3d 837 [2nd Dept 2009]; Jumandeo v Franks, 56 AD3d 614 [2nd Dept 2008]).

Accordingly, as the evidence in the record demonstrates that the defendant failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether plaintiff may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby

ORDERED, that the plaintiff's motion is granted, and the plaintiff, IVAN P. JIMENEZ, shall have partial summary judgment on the issue of liability against the defendants, IJAZ AHMAD and ADIBA AKMAL, and it is further,

ORDERED, that the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, that upon completion of discovery on the issue of damages, filing a note of issue and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on damages.

Dated: November 23, 2012
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.