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

ROSEMARIE SIBBLIES and MELBOURNE B. SIBBLIES,

Plaintiffs,

- against -

ALLEN J. HARRELL, AMADOU D. BARRY and ASH LEASING, INC.,

Defendants.

- x

Index No.: 29665/2010

Motion Date: 07/30/12

Motion Cal. No.: 65

Motion Seq.: 1

The following papers numbered 1 to 22 were read on the motion by defendants AMADOU D. BARRY and ASH LEASING, INC. for an order pursuant to CPLR 3212(b) granting summary judgment and dismissing the plaintiff's complaint and all cross-claims against said defendants; and the cross-motion of plaintiffs ROSEMARIE SIBBLIES and MELBOURNE B. SIBBLIES for an order pursuant to CPLR 3212(b) granting partial summary judgment on liability against defendant ALLEN J. HARRELL and setting the matter down for a trial on damages:

	Papers Numbered
BARRY/ASH LEASING Notice of Motion	1 - 8
SIBBLIES Notice of Cross-Motion	9 - 13
HARRELL Affirmations in Opposition(2)	14 - 19
BARRY/ASH LEASING Reply Affirmation	20 - 22

In this action for negligence, the plaintiffs ROSEMARIE SIBBLIES and MELBOURNE B. SIBBLIES, seek to recover damages for personal injuries they each sustained as a result of a motor vehicle accident that occurred at approximately 8:30 p.m. on December 29, 2009. The three-car, chain reaction accident took place at the intersection of Sutphin Boulevard and 97th Street Queens County, New York.

Defendants, Amadou D. Barry and Ash Leasing, Inc., move for an order pursuant to CPLR 3212(b), granting summary judgment and dismissing each plaintiff's complaint against them. Defendants contend that their vehicle, which was owned by defendant Ash Leasing, Inc. and operated by defendant Amadou D. Barry, was stopped at a red traffic signal at the intersection of Sutphin Boulevard and 97th Street when it was struck in the rear by the Harrell vehicle which propelled the Barry vehicle into the rear of the lead vehicle in the chain which was operated by plaintiff Melbourne Sibblies. The driver of the lead car, Melbourne Sibblies and the passenger in lead car, Rose Marie Sibblies both allege that they sustained injuries as a result of the collision.

The plaintiffs cross-move for partial summary judgment against Harrell on the issue of liability on the ground that their vehicle was stopped at the time of the accident and that Harrell negligently initiated the chain reaction accident by striking the Barry vehicle in the rear.

In support of the motion for summary judgment, defendant Barry submits an affidavit from counsel, Jonathan D. Silverstein, Esq; a copy of the pleadings; copies of the transcripts of the deposition testimony of Rosemarie Sibblies, Melbourne B. Sibblies Amadou D. Barry and Allen J. Harrell.

The deposition testimony of the parties in pertinent part, is as follows:

ROSEMARIE SIBBLIES, age 69, a secretary in the radiology department at Forest Hills Hospital was deposed on January 12, 2012. She testified that on the date of the accident, her husband was driving a Honda SUV in which she was a restrained front seat passenger. They were coming from the hospital and proceeding to their home. She stated that their vehicle was the first car stopped at a red light on Sutphin and 97th Street. The vehicle was stopped for about 20 seconds when it was struck in the rear by the Lincoln Town Car operated by Amadou Barry. After the accident, Rosemarie left the scene in an ambulance and was transported to the emergency room at Jamaica Hospital.

MELBOURNE SIBBLIES, an engineering consultant, age 80, testified at a deposition on March 30, 2012. He stated that on the date of the accident, he was operating a Honda Pilot. His wife, Rosemarie was a front seat passenger and her co-worker, was a rear seat passenger. He had picked up his wife and the co-worker and was taking them home. He was proceeding on Sutphin Boulevard when he stopped at a red traffic signal at the intersection of 97th Avenue. After being stopped for

approximately 30 seconds he heard the sound of a collision behind him and then he felt a heavy impact to the rear of his vehicle. He stated that his foot was on the brake at the time of the impact. When he exited his vehicle he observed that the car that had rear-ended his vehicle was a Lincoln Town Car. He also saw a third vehicle involved in the accident which had struck the Town Car. He stated that he left the scene in his own vehicle and drove to Jamaica Hospital where the ambulance had taken his wife.

AMADOU BARRY, a taxi driver, was deposed on April 25, 2012. He testified that on the date of the accident he was driving a Lincoln Town Car that he leased from defendant, Ash Leasing, Inc. He was driving on Sutphin Boulevard with a paying customer seated in the rear. When he reached the intersection with 97th Street he observed that the traffic signal was red and he came to a complete stop behind the plaintiff's vehicle which was stopped in front of his. Two or three seconds after he stopped, his vehicle was struck in the rear by the vehicle operated by Allen J. Harrell and his vehicle was immediately propelled into the plaintiff's vehicle in front of him.

ALLEN J. HARRELL, age 39, the driver of the third and last vehicle in the chain was deposed on March 30, 2012. He stated hat on the date of the accident, December 29, 2009, there was snow on the ground. He stated that the highway was dry although the streets were a "a little damp." He was driving a Chevy Suburban SUV. He had a friend with him who was seated in the front passenger seat. He was proceeding on Sutphin Boulevard taking his friend home when the accident occurred. He was traveling at a speed of 15-25 miles per hour. He stated that when he approached the intersection at 97th Street he saw a Lincoln Town Car in the middle of the block that suddenly applied its brakes. He said that when he saw that vehicle's taillights he "jammed on" his brakes. He stated that when he braked, his vehicle slid on black ice and although he attempted to turn his vehicle to the right he slid into rear of the Town Car in front of him. He stated that when the police arrived on the scene he told them that the cab stopped in front of him and he jammed on his brakes and slid on black ice.

Counsel for Barry contends that the evidence submitted in support of the motion for summary judgment demonstrates that the Barry vehicle, the middle vehicle of the three cars, was lawfully stopped in traffic when his car was rear-ended by the Harrell vehicle which propelled his vehicle into the plaintiffs' vehicle. Counsel contends that summary judgment should be awarded to Barry and Ash Leasing, dismissing the plaintiffs' respective complaints and all cross-claims against them because the evidence showed

that Barry was completely stopped behind the plaintiff's vehicle at a red traffic signal at the time of the accident and the sole proximate cause of the accident was the negligence of co-defendant Allen Harrell in rear-ending his vehicle and further, there is no evidence in the record that Barry was negligent in any manner. Barry contends that it is clear that Harrell, in the moving vehicle, failed to maintain a proper lookout, failed to maintain a proper speed and a safe distance from the vehicle in front of him.

As Barry, in the middle vehicle, was stopped and propelled into the plaintiffs' vehicle, counsel contends that the proof submitted shows that the complaint should be dismissed against Barry as Barry could not be liable for any of the injuries claimed by either Rosemarie of Melbourne Sibblies(see Ferguson v Honda, 34 AD3d 356 [1st Dept. 2006]; Mustafaj v Driscoll, 5 AD3d 139 [1st Dept. 2004]; McNulty v DePetro, 298 AD2d 566 [2d Dept. 2002]; Harris v Ryder, 292 AD2d 499 [2d Dept. 2002]; Cerda v Paisley, 273 AD2d 339 [2d Dept. 2000]).

The plaintiffs do not oppose the Barry motion for summary judgment. However, plaintiffs cross-move for partial summary judgment against Harrell on the issue of liability. Plaintiffs contend that the sworn testimony in the case clearly establishes that Harrell is solely responsible for the causation of the accident. Counsel reiterates that both the plaintiffs vehicle and the Barry vehicle behind it were stopped at the red light when Harrell rear-ended the Barry vehicle. Counsel contends that Harrell does not provided a nonnegligent explanation for striking the Barry vehicle in the rear and has failed to rebut the presumption that his actions were the sole cause of the subject accident. Plaintiff's counsel contends that the accident was caused solely by the negligence of Harrell in that said defendant's vehicle was traveling too closely in violation of VTL § 1129 and Harrell failed to safely stop his vehicle prior to rear-ending the Barry vehicle. Counsel contends, therefore, that the plaintiffs are entitled to partial summary judgment as to liability because defendant Harrell was solely responsible for causing the accident while the plaintiff driver was free from culpable conduct.

In support of the cross-motion, plaintiff submits a copy of the police MV-104 accident report which indicates that Harrell told the police officer at the scene that he struck the vehicle in front of him because that vehicle stopped short. He did not tell the officer that his vehicle skidded on black ice.

In opposition to the motion and cross-motion, counsel for defendant Harrell states that the respective motions for summary judgment should be denied on the ground that the movants have failed to establish, prima facie, their entitlement to summary judgment based upon the deposition testimony of Harrell that there was black ice on the road. Counsel asserts that the claim of black ice raises a question of fact as to whether Harrell was faced with an emergency situation not of his own making. Counsel argues that whether the accident was caused by weather conditions or defendant' Harrell's actions is for a jury to determine. Counsel claims that Harrell's testimony is sufficient to rebut plaintiff's prima facie showing of negligence and provide a non-negligent explanation for the rear-end collision. Counsel contends that defendant's assertion that Barry stopped short coupled with the fact that when he tried to brake, his vehicle unavoidably skidded on black ice, is a sufficient explanation to rebut the inference of negligence and to excuse the rear-end collision.

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]).

It is well established law that a rear-end collision with a stopped or stopping 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, Barry and Sibblies testified at their respective examinations before trial that their vehicles were at a complete stop when Harrell's vehicle struck Barry's vehicle in the rear causing the chain reaction accident. "The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1st Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199[1st Dept. 2005]). Evidence that a vehicle was rear-ended and propelled into the stopped vehicle in front of it may provide a sufficient non-negligent explanation (see Franco v. Breceus,70 AD3d 767 [2d Dept. 2010]; Katz v Masada II Car & Limo Serv., Inc., 43 AD3d 876

[2d Dept. 2007]). In multiple-car, chain-reaction accidents, the courts have recognized that the operator of a vehicle which has come to a complete stop and is propelled into the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (see Mohamed v Town of Niskayuna, 267 AD2d 909 [3rd Dept. 1999]). Here, both plaintiff and co-defendant Barry, who were both stopped at the time of the impact, demonstrated that their conduct was not a proximate cause of the rear-end collision between the Barry vehicle and the plaintiff's vehicle in front of it (see Abrahamian v Tak Chan, 33 AD3d 947 [2d Dept. 2006]; Calabrese v Kennedy, 8 AD3d 505 [2d Dept. 2006]; Ratner v Petruso, 274 AD2d 566 [2d Dept. 2000]). Thus, both defendant Barry and plaintiffs satisfied their prima facie burden of establishing entitlement to judgment as a matter of law by demonstrating that their vehicles were both stopped at the time they were struck in the rear in a chain reaction which was initiated by defendant Harrell.

Having made the requisite prima facie showing of their entitlement to summary judgment, the burden then shifted to defendant Harrell to raise a non-negligent explanation for the rear end collision or a triable issue of fact as to whether Barry 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 co-defendant Harrell failed to submit evidence as to any negligence on the part of Barry or to provide 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]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). "A claim that the driver of the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (Campbell v City of Yonkers, 37 AD3d 750 [2d Dept. 2007] quoting Ayach v Ghazal, 25 AD3d 742 [2d Dept. 2006]; also see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011]; Kastritsios v Marcello, 923 NYS2d 863 [2d Dept. 2011]; Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]; Jumandeo v Franks, 56 AD3d 614 [2d Dept. 2008]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v. Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). In Plummer, supra., the Court also held that the inference of negligence is also not rebutted by the mere assertion that defendant's vehicle was unable to stop on a wet

roadway (citing Volpe v Limoncelli, 74 AD3d 795 [2d Dept. 2010]). "Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead (see Vehicle and Traffic Law § 1129 [a]; Faul v. Reilly, 29 AD3d 626 [2d Dept. 2006] [the deposition testimony of the defendant that he saw the stopped vehicle in which the plaintiff was a passenger and applied his brakes but that his vehicle nevertheless skidded into the stopped vehicle due to road conditions was insufficient to rebut the inference the he was negligent]; Shamah v Richmond County Ambulance Serv., 279 AD2d 564 [2d Dept. 2001]). Thus, drivers must maintain safe distances between their cars and the cars in front of them in light of the traffic conditions including stopped vehicles and wet and icy roads.

In addition, the Second Department has held that the emergency doctrine does not apply to typical accidents involving rear-end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead (see Vehicle and Traffic Law § 1129[a]; Lowhar-Lewis v Metropolitan Transp. Auth., 97 AD3d 728 [2d Dept. 2012]; Jacobellis v New York State Thruway Auth., 51 AD3d 976 [2d Dept. 2008]; Nat'l Interstate v A.J. Murphy Co., 9 AD3d 714 [3rd Dept. 2004]; Gage v Raffensperger, 234 AD2d 751 [3rd Dept. 1996][the emergency doctrine is only applicable when a party is confronted by sudden, unforeseeable occurrence not of their own making]).

Here, Harrell testified that there was snow on the ground and the roads were damp. Based upon the traffic conditions and the fact that the road was icy, defendant had a duty to maintain a safe distance based upon the traffic and the prevailing condition of the road. The record indicates that the Barry did not come to a sudden unexplained stop, but rather, was stopped at a red light. In addition, the defendant's vehicle did not suffer an unavoidable skid on ice, but rather, based upon the icy roadway, Harrell should have left sufficient room between his car and the car in front.

Thus, as the defendant Harrell failed to proffer sufficient evidence to rebut the inference of his own negligence and to raise a triable issue of fact in this regard and as the evidence in the record demonstrates that there are no triable issues of fact as to whether defendant Barry or plaintiff Sibblies may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby

ORDERED that the motion by defendant Barry and Ash Leasing, Inc. for summary judgment dismissing the plaintiff's complaint and all cross-claims against them is granted, and it is further

ORDERED, that the plaintiff's cross-motion for summary judgment is granted, and the plaintiffs, Rosemarie and Melbourne Sibblies, shall have partial summary judgment on the issue of liability against the defendant Allen J. Harrell, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, that upon 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: September 11, 2012
Long Island City, N.Y.

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ROBERT J. MCDONALD
J.S.C.