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

JOSE G. BARROS,

Plaintiff,

- against -

GREYHOUND LINES, INC., APOLINAR FRIAS, STARR MOTOR COACH, LLC, STARR BUS CHARTER & TOURS and ALFRED AUGUSTUS BRAME,

Defendants.

- x

Action No. 1

Index No.: 322/2012

Motion Date: 08/09/13

Motion Cal. No.: 6

Motion Seq.: 1

ALFRED BRAME,

Plaintiff,

- against -

JOSE G. BARROS, APOLINAR FRIAS and GREYHOUND LINES, INC.,

Defendants.

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Action No. 2

Index No.: 6856/2012

The following papers numbered 1 to 26 were read on the motion by plaintiff in Action No. 2 for an order pursuant to CPLR 3212(b) granting partial summary judgment on the issue of liability against defendants JOSE G. BARROS, APOLINAR FRIAS and GREYHOUND LINES, INC. and setting the matter down for a trial on damages; and the cross-motion of plaintiff in Action No. 1 for an order pursuant to CPLR 3212(b) granting partial summary judgment on the issue of liability against defendants GREYHOUND LINES, INC., APOLINAR FRIAS, STARR MOTOR COACH, LLC, STARR BUS CHARTER & TOURS and ALFRED AUGUSTUS BRAME:

	Papers Numbered
BRAME Notice of Motion-Affidavits-Exhibits	1 - 8
BARROS Notice of Cross-Motion-Affidavits-Exhibits	9 - 13
GREYHOUND/FRIAS Affirmation in Opposition to Cross-Motion	14 - 19
STARR/BRAME Affirmation in Opposition to Cross-Motion	20 - 23
BRAME Reply Affirmation	24 - 26

In this action for negligence, plaintiffs in Action Nos. 1 and 2, Jose G. Barros and Alfred Brame, seek to recover damages for personal injuries they each allegedly sustained as a result of a multi-vehicle accident that occurred on October 1, 2011. The three-car, chain reaction accident took place in stop and go traffic on the Brooklyn-Queens Expressway(BQE). Alfred Brame, who was driving a bus owned by Starr Bus Charter & Tours claims that he was slowing down in traffic in the middle of the westbound lanes of the BQE when his vehicle was struck in the rear by the second vehicle in the chain, a 2001 Ford Suburban operated by Jose G. Barros. Barros, in the middle vehicle claims that his vehicle was hit in the rear by the third vehicle in the chain, a bus operated by Apolinar Frias and owned by Greyhound Lines, Inc. Which pushed his vehicle into the lead vehicle operated by Brame.

Action No. 1 was commenced by Jose Barros by filing a summons and complaint on January 6, 2012 naming Greyhound Lines, Inc., Apolinar Frias, Starr Motor Coach, LLC, Starr Bus Charter & Tours and Alfred Brame as defendants. Action No. 2 was commenced by Alfred Brame by filing a summons and complaint on March 30, 2012 naming Barros, Frias and Greyhound as defendants. As the two actions arose out of the same multi-vehicle accident and involve common questions of law and fact, Alfred Brame moved to consolidate the two actions for trial. By decision and order dated October 24, 2012 Justice Markey granted the motion to the extent of ordering a joint trial. Notes of issue have been filed in each action.

Plaintiff Brame, the driver of the lead vehicle, and plaintiff Barros, the driver of the middle vehicle move, prior to depositions, for partial summary judgment on the issue of liability on the ground that each of their vehicles was slowing down or stopped in traffic at the time of the accident and that defendant Apolinar Frias in the third vehicle negligently initiated the chain reaction accident by first striking the Barros vehicle in the rear which resulted in Barros' vehicle being propelled into the lead vehicle operated by Alfred Brame.

In support of the motion for summary judgment, plaintiff Brame submits an affidavit from counsel, Jeffrey Becker, Esq; a copy of the pleadings; a copy of the police accident report; a copy of Brame's verified bill of particulars; and a copy of an affidavit of facts from Alfred Brame dated March 25, 2013.

In his affidavit, Mr. Brame, age 70, a resident of Philadelphia, Pennsylvania, states that on October 11, 2011, he was operating a bus with the permission of its owner, Starr Bus Charter & Tours. With respect to the accident he states that,

"The accident occurred while I was slowing down in traffic while driving in the middle lane westbound on the Brooklyn Queens Expressway, at or near its intersection with Broadway, in the County of Queens, City and State of New York, when I was struck in the rear by the defendant, Jose G. Barros, who was operating a 2001 Ford Suburban..who was struck by the defendant Apolinar Farias, operating a bus bearing a State of Texas registration... with the permission and consent of defendant Greyhound Lines, Inc. The accident was solely the fault of Jose G. Barros, Apolinar Frias and Greyhound Lines, Inc., by reason of their vehicles striking my vehicle directly in the rear without any prior warning, while I was slowing down in traffic in the middle lane westbound on the BQE due to heavy traffic."

The police accident report provides in the accident description section,

" A t/p/o driver vehicle # 1(Brame), states while slowing down in traffic while driving in the middle lane W/B BQE struck by Vehicle #2(Barros). Driver vehicle #2(Barros) states driving in middle lane as the vehicle in front of his was stopped so he went to stop and vehicle #3(Frias)rear end vehicle #2(Barros), causing his vehicle to rear end Vehicle #1(Brame). Driver vehicle # 3(Frias) states driving in middle lane when Vehicle #1 was stopped and Vehicle #2 stopped suddenly causing vehicle #3 to rear end vehicle #2."

Counsel for Brame contends that the evidence submitted in support of the motion for summary judgment demonstrates that his vehicle, the lead vehicle of the three cars, was lawfully slowing down in traffic when his car was rear-ended by the Barros vehicle which had been propelled into his vehicle after being struck by the Frias vehicle. Counsel contends that partial summary judgment on the issue of liability should be awarded to Brame, because the evidence showed that Brame was lawfully slowing down in traffic at the time of the accident and the sole proximate cause of the accident was the

negligence of co-defendants Frias and Barros in rear-ending his vehicle and further, there is no evidence in the record that Brame was negligent in any manner. Brame contends that the vehicles behind his vehicle were negligent in failing to maintain a proper lookout and failing to maintain a proper speed and a safe distance from the vehicle in front of it.

Plaintiff in Action No. 1, Jose Barros cross-moves for summary judgment against the driver and owner of the vehicle behind his operated by Apolinar Frias and the driver and owner of the vehicle in front of his operated by Alfred Brame. In support of the cross motion counsel, Francis J. Leone, Esq., states that the police report as well as the affidavits of Brame and Frias all state that Barros, in the middle vehicle had lawfully stopped in traffic behind the Brame vehicle when it was propelled into the Brame vehicle after being struck in the rear by the Frias vehicle.

As Barros, in the middle vehicle, was stopped and propelled into the Brame vehicle, counsel for Barros contends that the proof submitted shows that he is entitled to partial summary judgment on liability against Frias and Brame as Barros, whose vehicle was stopped could not be liable for injuries sustained by Brame and was not comparatively negligent vis a vis the collision with the Frias vehicle behind his(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]). Counsel opposes Brame's motion for summary judgment stating that Frias, in his affidavit, raises a question of fact as to Brame's comparative negligence requiring a denial of his motion for summary judgment.

In opposition to the motion and cross-motion counsel for Mr. Frias, Anthony S. Calvacca, Esq., submits the affidavit of Mr. Apolinar Frias, a resident of Massachusetts, dated May 16, 2013. In his affidavit, Mr. Frias states that on October 1, 2011 he was employed by Greyhound Lines, Inc., as a bus operator. He states that, "the accident occurred while I was operating the bus in the middle lane of the BQE when a 2001 Ford Suburban that was being operated by Jose Burros stopped suddenly in front of my vehicle causing my vehicle to rear end the same 2001 Ford suburban. There was a bus that appeared to be stopped in the middle of the BQE in front of the 2001 Ford Suburban with no flashing lights or safety cones indicating that it was stopped or disabled."

Counsel for Frias claims that the Frias affidavit creates a question of fact regarding the comparative negligence of both the lead vehicle and the middle vehicle and provides a non-negligent

explanation for his rear ending the Barros vehicle. Frias claims that Brame stopped in the middle lane with no flashing lights or safety cones and Barros made a sudden stop. Therefore Frias contends that summary judgment may not be granted at this juncture in the proceedings.

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]. Further, Vehicle and Traffic Law § 1129 prohibits following too closely. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic and the condition of the highway (see Gifford v Consolidated Edison Co. of N.Y., 103 AD3d 773 [2d Dept. 2013]; Sehgal v www.nyairportsbus.com, Inc., 100 AD3d 860 [2d Dept. 2012]; Napolitano v Galletta, 85 AD3d 881 [2d Dept. 2011]). 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.

Here, the evidence submitted demonstrates that the lead vehicle, a bus operated by Brame, was slowing down in traffic on the BQE and the second vehicle operated by Barros stopped behind the Brame vehicle when the bus operated by Mr. Frias struck Barros'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]). 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]). 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]). Here, both Barros and Brame in vehicles 1 and 2 who were both slowing down or stopped in traffic on the BQE at the time of the impact, demonstrated that their conduct was not a proximate cause of the rear-end collision between the Frias vehicle and the vehicles ahead of it (see Robayo v Aghaabdul, 2013 NY Slip Op 5889 [2d Dept. 2013]; Sayyed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

Thus, both Barros and Brame satisfied their prima facie burden of establishing entitlement to judgment as a matter of law by demonstrating that their vehicles were both stopped or slowing down at the time they were struck in the rear in a chain reaction which was initiated by defendant Frias.

Having made the requisite prima facie showing of their entitlement to summary judgment, the burden then shifted to defendant Frias to raise a non-negligent explanation for the rear end collision or a triable issue of fact as to whether Barros or Brame was also negligent, and if so, whether that negligence contributed to the happening of the accident (see (see Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]; Goemans v County of Suffolk,57 AD3d 478 [2d Dept. 2007]).

This court finds that Frias failed to submit evidence as to any negligence on the part of Brame of Barros 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, 84 AD3d 1174 [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]). "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]).

Based upon the traffic conditions, defendant Frias had a duty to maintain a safe distance between his bus and the Barros vehicle. Further there is no evidence in the record that the Brame bus was disabled or that there would be any need or reason to have cones or flashing lights displayed by the lead bus.

Thus, as the defendant Frias 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 Brame or Barros in the first two vehicles may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the motion by plaintiff Alfred Brame in Action No. 2 for partial summary judgment on liability is granted as against defendant Apolinar Frias and Greyhound Bus Lines only, and it is further,

ORDERED, that plaintiff Brame's motion for partial summary judgment against Jose G. Barros, the driver of the second car propelled into his vehicle is denied, and it is further,

ORDERED, that the cross-motion of plaintiff Jose G. Barros for partial summary judgment is granted as against defendant Apolinar Frias and Starr Bus Charter & Tours and Starr Motor Coach LLC only and, it is further,

ORDERED, that the cross-motion by Jose Barros for summary judgment against the vehicle in front of his, operated by Alfred Brame and owned by Greyhound Lines, Inc is denied, 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 only.

Dated: October 11, 2013
Long Island City, N.Y.

ROBERT J. McDONALD, J.S.C.