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| Martey v Gotham Area Limousine Corp. |
| 2016 NY Slip Op 31399(U) |
| July 21, 2016 |
| Supreme Court, New York County |
| Docket Number: 156872/15 |
| Judge: Leticia M. Ramirez |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 22

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LOVIA MARTEY

Plaintiff

Against

INDEX # 156872/15

GOTHAM AREA LIMOUSINE CORP.,
SAVERIO STALLONE, MATTHEW R. CHAPMAN
AMANDA C. OLIVEIRA, CHERYL ARONSON and
MATTHEW S. RACKETT

DECISION/ORDER

Defendants

LETICIA M. RAMIREZ, JSC

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Plaintiff, Lovia Martey [hereinafter “Martey”] moves, pursuant to CPLR§ 3212, for summary judgment on the issue of liability, alleging, *inter alia*, to be the innocent passenger in a vehicle owned by defendant Gotham Area Limousine Corp., and driven by defendant Saverio Stallone, [hereinafter, “Gotham/Stallone”],who oppose the instant motion. Defendant Cheryl Aronson, [hereinafter, “Aronson”], operator of one of the vehicles involved in this accident, cross-moves pursuant to CPLR§ 3212 for, *inter alia*, summary judgment on the issue of liability. Defendants Gotham/Stallone and plaintiff Martey, oppose. Defendant Matthew S. Rackett, [hereinafter, “Rackett”] operator of the front vehicle of this 4 -car accident also moves, pursuant to CPLR§3212, for *inter alia*, summary judgment on the issue of liability. Non-moving party Matthew R. Chapman and Amanda C Oliveira, [hereinafter, “Chapman/Oliviera”] driver and owner of one of the vehicles involved, opposes Racket’s motion, as well as plaintiff Martey’s motion.

This four-car motor vehicle accident occurred on November 25, 2014 on Nicolls Road in Centereach, New York, at approximately 9:30 am. Plaintiff alleges that she was the passenger in the vehicle owned by Gotham, and driven by Stallone, which became involved in the subject four-car accident as they traveled northbound near the intersection of Wireless Road, in Suffolk County. Plaintiff’s affidavit in support (*Exh Q*) reveals that as Stallone proceeded towards the intersection, he encountered vehicles that were stopped. Plaintiff’s affidavit further reveals that

Stallone did not honk his horn, nor were there any visual obstructions in the area where the accident occurred. In describing the accident, plaintiff's affidavit reveals that the "Gotham/Stallone" vehicle struck the rear of the Chapman/Oliveira vehicle. The Chapman/Oliveira vehicle then struck the rear of the Aronson vehicle, which then caused the Aronson vehicle to strike the Rackett vehicle in the rear.

Plaintiff moves for summary judgment alleging she is an innocent passenger in this motor vehicle accident who has suffered personal injuries and did nothing to cause the accident, and as such, is entitled to summary judgment on the issue of liability.

In opposition, Gotham/Stallone argues that plaintiff's request for summary judgment is premature as discovery has not been conducted. In addition, Stallone submits his own affidavit in opposition (*see, Exh A*) alleging, *inter alia*, that the Chapman/Oliveira vehicle stopped abruptly, thereby causing the accident.

Aronson cross-moves, alleging that her vehicle was rear-ended by the Chapman/Oliveira vehicle. In support, Aronson submits an affidavit (*Exh F*) alleging that when she was stopped for a traffic light, she was struck by a vehicle from behind, which in turn caused her to strike the vehicle in front of her. Also contained in the cross-motion is the affidavit of Amanda Oliveira (*see, Exh E*), which revealed that as she was heading north on Nicolls Road, the vehicle in front of her came to a full stop, which caused her to come to a complete stop. Once her vehicle fully stopped, it was rear ended, which pushed her vehicle into the car in front of her.

Rackett, also moves for summary judgment. His affidavit submitted in support of his motion for, *inter alia*, dismissal (*see, Exh F*), reveals that he was stopped at a red light, which he was able to do safely. While he was stopped, he was struck from the rear by the Aronson vehicle. He further alleged that he heard the sounds of two impacts prior to the impact to his vehicle.

To prevail on a summary judgment motion on the issue of liability, the movant has the burden of establishing, with admissible evidence, that the he or she is free from any comparative negligence, as a matter of law and that another party's negligence was the substantial cause of the accident that resulted in plaintiff's alleged injury. *Thoma v Ronai*, 82 N.Y.2d 736 (1993); *Maniscalco v New York City Transit Auth.*, 95 A.D.3d 510 (1st Dept. 2012). It then becomes incumbent upon the defendant to submit proof, in admissible form, sufficient to raise an issue of

fact which warrants resolution at trial. *Zuckerman v City of New York* 49 NY2d 557[1980].

Gotham/Stallone's argument, that plaintiff's motion is premature as discovery has yet to be completed is unavailing under the circumstances of this case. *Soto-Marroquin v Mellet*, 63 AD3d 449[1st Dept 2009].

In addition, Gotham/Stallone's claim of Chapman/Oliviera's vehicle stopping short, thereby causing the accident, is without a basis in law.

It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the rear vehicle and imposes a duty on the driver of the rear vehicle to come forward with an adequate non-negligent explanation for the accident. *Cruz v Lise*, 123 A.D.3d 514 [1st Dept. 2014]. Moreover, a claim that a vehicle in front stopped suddenly, standing alone, is insufficient to raise a triable issue of fact *Cruz, supra*. See also, *Corrigan v Porter Cab Corp.*, 101 AD3d 471[1st Dept 2012].

A review of the opposition papers reveals that Gotham/ Stallone failed to raise a triable issue of fact. Stallone's affidavit, fails to offer an adequate non-negligent reason for striking the Chapman /Oliveira vehicle. His allegation of an abrupt stop, without more, fails to raise a triable issue of fact. Therefore, the Court finds that plaintiff has made out a *prima facie* case of entitlement to summary judgment as a matter of law. Accordingly, the plaintiff's motion is granted.

Next, based upon a review of the papers submitted in support of and opposition to the motions before this Court, the Court finds that Chapman/Oliveira¹, Aronson and Rackett, are entitled to summary judgment, based upon the well settled law that a rear end collision is *prima facie* proof of negligence on the part of the rear-most vehicle. Applying the aforementioned case law, the Court finds that the Gotham/Stallone vehicle was the substantial cause of the subject accident.

Accordingly, plaintiff's complaint against Aronson, Rackett and Chapman/Oliveira are dismissed. Plaintiff may proceed on the issue of damages as against defendant Gotham and Stallone. Aronson, Rackett and Chapman/Oliveira's requests for dismissal of any cross-claims is

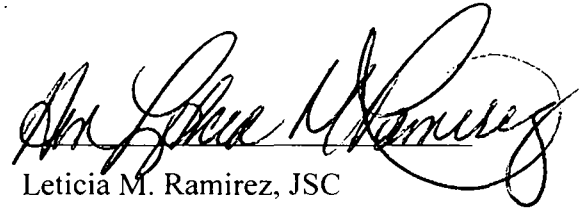
¹Although Chapman/Oliveira did not move for affirmative relief, CPLR §3212 (b) allows this Court to grant summary judgment if it appears that a party is so entitled, without the need for a cross-motion.

not reached, in light of this Decision.

Plaintiff is directed to serve a copy of this Decision, with Notice of Entry upon defendants within 20 days of this Decision.

This constitutes the Decision and Order of this Court.

Dated: July 21, 2016



Leticia M. Ramirez, JSC