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SHORT FORM ORDER

INDEX No. 15-18951
CAL. No. 17-01791MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 2-20-18 (002)
MOTION DATE 2-19-18 (003)
ADJ. DATE 3-15-18
Mot. Seq. # 002 MG
003 MG

ANDREW M. THALER as Bankruptcy Trustee of the Estate of BRIAN M. TORLINCASI,

Plaintiff,

- against -

ROGER S. LAO, AMANDA L. HENNESSEY, YAZMIN E. KAZIN, CHRISTINE GELLER and ANN M. CUTAIA,

Defendants.

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Upon the following papers numbered 1 to 59 read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers 1-18; 38-53; ; Answering Affirmation in Opposition and supporting papers 19-30; 31-32; 33-34; 54-55; 56-57;58-59 ; Replying Affirmation and supporting papers 35-37 ; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motions (003 and 004) are consolidated herein for disposition; and it is

ORDERED that the motion (003) by defendant Yazmin E. Kazin for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint and cross claims asserted against her, is granted; and it is further

ORDERED that the motion (004) by Christine Geller and Ann M. Cutaia for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint and cross claims against them, is granted.

This is an action to recover damages for personal injuries allegedly sustained by Torlincasi as a result of a chain reaction, rear-end motor vehicle accident that occurred on the Long Island Expressway, near the exit for Powells Lane, in the Village of Old Westbury on April 13, 2015. It is undisputed that there were five vehicles involved in the accident. The lead vehicle was owned by defendant Ann M. Cutaia and operated by defendant Christine Geller. The vehicle behind Geller's vehicle was owned and operated by Yazmin E. Kazin, and following Kazin's vehicle was the vehicle operated by Torlincasi. Traveling behind Torlincasi's vehicle was the vehicle owned and operated by Amanda L. Hennessey, and behind Hennessey's vehicle was the vehicle owned and operated by defendant Roger S. Lao.

Kazin now moves for summary judgment dismissing the complaint and cross claims asserted against her, arguing that she was not negligent in the happening of the accident. In support of her motion, Kazin submits, inter alia, copies of the pleadings, the bill of particulars, and the parties' deposition testimony. Cutaia and Geller (collectively referred to as the Geller defendants) also move for summary judgment in their favor, arguing that they were not negligent in causing the accident. In support of their motion, the Geller defendants submit, inter alia, the pleadings, the bill of particulars, and the parties' deposition testimony. In opposition to the motions, Torlincasi, Hennessey, and Lao argue that a triable issue exists as to the cause of the accident.

At his deposition, Torlincasi testified that prior to the accident, he was traveling eastbound for approximately 30 minutes on the Long Island Expressway in stop-and-go traffic when his vehicle, came to a gradual stop near the exit for Powells Lane. Torlincasi testified that he had been stopped for approximately five seconds, and that he was approximately eight feet in distance away from the rear of Kazin's vehicle, when the vehicle operated by Hennessey struck the rear of his vehicle. He stated that the impact was heavy, and caused his vehicle to be propelled into the rear of Kazin's vehicle. He testified that he did not hear any sounds of a horn, or any other impacts on the roadway prior to his accident.

At her deposition, Geller testified that on the day of the accident she was traveling eastbound on the Long Island Expressway during "rush hour" in stop-and-go traffic, driving a vehicle owned by her

mother, Ann Cutaia. Geller testified that her vehicle, as well as traffic, gradually came to a complete stop, and that she felt an impact in the rear of her vehicle. Geller further testified that Kazin's vehicle struck the rear of her vehicle. She stated that she did not hear any sounds of a horn, brakes screeching, or any other impacts on the roadway prior to her accident. Geller testified that her vehicle did not collide with the vehicle in front of her.

At her deposition, Kazin testified that prior to her accident, she was traveling eastbound on the Long Island Expressway in stop-and-go traffic, and that her vehicle came to a complete stop approximately three to four feet behind Geller's vehicle. She further testified that approximately one minute later, plaintiff's vehicle struck the rear of her vehicle, and that the impact caused her vehicle to propel into the rear of Geller's vehicle. She testified that she did not hear any sounds of brakes screeching, or any other impacts on the roadway prior to her accident.

At her deposition, Hennessey testified that just prior to her accident she was traveling eastbound on the Long Island Expressway in stop-and-go traffic. She testified that she observed Torlincasi's vehicle come to a complete stop, and that a "pileup" of vehicles, including Torlincasi's vehicle, "hit" each other in front of her vehicle. Hennessey further testified that her vehicle slowed down, came to a complete stop, and that the rear of her vehicle was struck by the front of Lao's vehicle. She testified that the impact was heavy, and caused her vehicle to be propelled into the rear of Torlincasi's vehicle. She testified that she did not recall hearing any sounds of any other impacts on the roadway prior to her accident.

At his deposition, Lao testified that just prior to his accident he was traveling eastbound on the Long Island Expressway at approximately 40 miles per hour in "congested" traffic behind Hennessy's vehicle. Lao testified that he observed Hennessy's vehicle brake lights illuminate, when he was approximately 20 to 30 yards in distance from the rear of Hennessey's vehicle. According to Lao, approximately a second later, he applied " pressure" to his brakes, and the front of his vehicle struck the rear of Hennessey's vehicle. He testified that Hennessey's vehicle had come to a complete stop prior to the accident. Lao testified that he did not hear any sounds of a horn, screeching brakes or any other impacts on the roadway pror to his accident.

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The failure to make such a prima facie case showing requires the denial of the motion regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). However, upon the movant establishing a prima facie showing of entitlement to a summary judgment, the burden then shifts to the opponent to offer evidence in admissible form sufficient to establish a material issue of fact requiring a trial of the action (***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, *supra*).

When a driver approaches another vehicle from the rear, he or she is bound to maintain a reasonably safe rate of speed, to maintain control of his or her vehicle, and to use reasonable care to avoid colliding with the other vehicle (Vehicle and Traffic Law § 1129 [a]; ***Gallo v Jairath***, 122 AD3d 795, 996 NYS2d 682 [2d Dept 2014]; ***Nsiah-Ababio v Hunter***, 78 AD3d 672, 913 NYS2d 659 [2d Dept 2010]). The occurrence of a rear-end collision with a stopped or stopping vehicles creates a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on that operator to come forward with a non-negligent explanation for the collision (***McLaughlin v Lunn***, 137 AD3d 757, 26 NYS3d 338 [2d Dept 2016]; ***Cheow v Cheng Lin Jin***, 121 AD3d 1058, 995 NYS2d 186 [2d Dept 2014]; ***Perez v Roberts***, 91 AD3d 620, 936 NYS2d 259 [2d Dept 2012]; ***Volpe v Limoncelli***, 74 AD3d 795, 902 NYS2d 152 [2d Dept 2010]). This burden is placed on the driver of the rear vehicle because he or she is in the best position to explain whether the collision was due to a mechanical failure, a sudden stop of the vehicle ahead, unavoidable skidding on wet pavement, or some other reasonable cause (***Sayyed v Murray***, 109 AD3d 464, 970 NYS2d 279 [2d Dept 2013]; ***Fajardo v City of New York***, 95 AD3d 820, 943 NYS2d 587 [2d Dept 2012]). If the operator of the rear vehicle cannot come forward with evidence to rebut the inference of negligence, the plaintiff is entitled to summary judgment (***Gibson v Levine***, 95 AD3d 1071, 944 NYS2d 610 [2d Dept 2012]); ***Kimyagarov v Nixon Taxi Corp.***, 45 AD3d 736, 846 NYS2d 309 [2d Dept 2007]). "In chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle" (***Chuk Hwa Shin v Correale***, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016]; ***Kuris v El Sol Contr. & Constr. Corp.***, 116 AD3d 675, 983 NYS2d 580 [2d Dept 2014]; ***Raimondo v Plunkitt***, 102 Ad3d 851, 958 NYS2d 460 [2d Dept 2013]).

Here, Kazin established her prima facie entitlement to summary judgment by demonstrating that her vehicle was stopped in traffic prior to the collision, and that Torlincasi's vehicle struck the rear of her vehicle while it was stopped on the roadway (*see* ***Morales v Amar***, 145 A3d 1000, 44 NYS3d 184 [2d Dept 2016]; ***Fonteboa v Nugget Cab Corp.***, 123 AD3d 759, 999 NYS2d 113 [2d Dept 2014]; ***Perez v Roberts***, *supra*; ***Volpe v Limoncelli***, *supra*; ***Ferguson v Honda Lease Trust***, 34 AD3d 356, 826 NYS2d 10 [1st Dept 2006]). The Geller defendants also established their prima facie entitlement to summary judgment by demonstrating that their vehicle was stopped, and that Torlincasi's vehicle struck the rear of Kazin's vehicle, propelling it into the rear of their vehicle (*see* ***Prine v Santee***, 21 NY3d 923, 967 NYS2d 684 [2013]; ***Volpe v Limoncelli***, *supra;* ***Ferguson v Honda Lease Trust***, *supra*).

In opposition, plaintiff failed to raise a triable issue of fact. Here, Torlincasi's, Kazin's, and Geller's deposition testimony demonstrate that Torlincasi's vehicle struck the rear of Kazin's vehicle when it was stopped in traffic, and the impact propelled Kazin's vehicle into the rear of Geller's vehicle. The statement in Torlincasi's affidavit that Kazin's vehicle abruptly stopped is insufficient to rebut the inference of negligence created by the rear-end collision with such vehicle (*see* ***Robayo v Aghaabdul***, 109 AD3d 892, 971 NYS2d 317 [2d Dept 2013]; ***Xian Hong Pan v Buglione***, 101 AD3d 706, 955 NYS2d 375 [2d Dept 2012]). Moreover, as Torlincasi acknowledged at his deposition that there was "stop and go" traffic, he cannot claim that Kazin's stop was unanticipated (*see* ***Harrington v Kern***, 52 AD3d 473, 859 NYS2d 480 [2d Dept 2008]; ***Greene v Sivret***, 43 AD3d 1328, 842 NYS2d 814 [4th Dept 2007]), and evidence that Kazin's vehicle may have stopped abruptly under such traffic conditions does

not amount to proof that Kazin was in any way at fault in the happening of the accident (*see* ***Mascitti v Greene***, 250 AD2d 821, 673 NYS2d 206 [2d Dept 1998]). Additionally, Hennessey and Lao failed to raise a triable issue of fact as to Kazin and the Geller defendants' motions for summary judgment in their favor in the complaint and the cross claims asserted against them. As their respective attorneys lack personal knowledge of the facts, their affirmations lack probative value and is insufficient to raise a triable issue of fact (*see* ***Zuckerman v City of New York***, *supra*).

Accordingly, Kazin and the Geller defendants' motions for summary judgment dismissing the complaint and cross claims against them are granted.

Dated: SEP 25 2018

HON. JOSEPH A. SANTORELLI
J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**