ORIGINAL

SHORT FORM ORDER

INDEX No. 609789/2018
CAL No. _____

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 12-22-15
SUBMIT DATE 1-12-17
Mot. Seq. # 02 - MG
Mot. Seq. # 03 –Mot D

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YURITY Y. CHAGIN,

Plaintiff,

-against-

283 SKIDMORE ROAD, INC., GEORGIOS A. LOUIZOS, DARSHAN RAMESH SHAH, and MONICA A. MASTRO,

Defendants.

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Upon the following papers numbered 1 to 27 read on this motion for summary judgment & consolidation; Notice of Motion/ Order to Show Cause and supporting papers 1 – 9(#2) & 21 – 27 (#03) ; ~~Notice of Cross Motion and supporting papers~~ ; Answering Affidavits and supporting papers 10 – 16 (#02) ; Replying Affidavits and supporting papers 17 – 20 (#2) ; ~~Other~~ ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

Defendants, Darshan Ramesh Shah and Monica A. Mastro, move for an order granting summary judgment and dismissing the complaint of the plaintiff and any cross-claims or counterclaims of the defendants 283 Skidmore Road, Inc., and Georgios A. Louizos. Defendants 283 Skidmore Road, Inc., and Georgios A. Louizos separately move for an order consolidating the instant action with an action currently pending in Supreme Court, Queens County entitled ***Monica Mastro v. 283 Skidmore Road, Inc. and Georgios Louizos***, Index No. 708512/2018, and for an order transferring venue of the action currently pending in Supreme Court, Queens County to Suffolk County.

Motion for Summary Judgment

This is an action to recover damages for injuries allegedly sustained by plaintiff Yurity Y. Chagin as a result of a motor vehicle accident which occurred on March 30, 2018 on northbound Commack Road, at or near the intersection with Burlington Avenue, in the Town of Babylon. The accident allegedly happened when a vehicle owned by defendant 283Skidmore Road, Inc., and operated by defendant Georgios A. Louizos struck a vehicle owned by defendant Darshan Ramesh Shah and operated by defendant Monica A. Mastro in the rear. As a result of the initial impact, the vehicle operated by defendant Monica A. Mastro was propelled forward and struck plaintiff's vehicle in the rear. By her complaint, plaintiff alleges that she suffered serious injuries as a result of the accident.

The defendants, Darshan Ramesh Shah and Monica A. Mastro, now move for summary judgment dismissing the complaint and cross-claims or counterclaims as asserted against them, arguing that defendant Georgios A. Louizos' negligence was the sole legal and proximate cause of the accident. In support, defendant Mastro submits, among other things, a copy of a police report, her own affidavit, and copies of the pleadings. The police accident report indicates that defendant Louizos stated "that he was traveling northbound on Commack Rd when he saw the red light at the intersection of Commack Rd and Burlington Ave...[he] states that he tried to stop but his foot slipped off of the brake and he struck vehicle 2 in the rear." In opposition, the non-moving defendants submit an affirmation of their attorney and an affidavit of defendant Louizos which states that "as I approached the intersection with Burlington Avenue, the traffic light was green... I then noticed the brake lights of the car traveling in front of me were engaged and I immediately engaged the brakes on my truck" He further claims that "I was unable to stop my truck before making contact with the car traveling in front of me as she stopped shortly when she had more room between her car and the other in front of her." Plaintiff has not submitted any papers in opposition to the motion.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]). Once this showing has been made, the burden shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (*see* ***Estate of Cook v Gomez***, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]; ***Boulos v Lerner-Harrington***, 124 AD3d 709, 709, 2 NYS3d 526 [2d Dept 2015]; ***Rungoo v Leary***, 110 AD3d 781, 782, 972 NYS2d 672 [2d Dept 2013]). While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (*see* ***Estate of Cook v Gomez***, *supra*; ***Jones v Vialva-Duke***, 106 AD3d 1052, 966 NYS2d 187

[2d Dept 2013]; ***Kalland v Hungry Harbor Assoc., LLC***, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011].

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 (*see* Vehicle and Traffic Law § 1129[a]; ***Melendez v McCrowell***, 139 AD3d 1018, 32 NYS3d 604 [2d Dept 2016]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]; ***Martinez v Martinez***, 93 AD3d 767, 941 NYS2d 189 [2d Dept 2012]). Accordingly, a rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see* ***Strickland v Tirino***, 99 AD3d 888, 952 NYS2d 599 [2d Dept 2012]; ***Martinez v Martinez***, *supra*; ***Giangrasso v Callahan***, 87 AD3d 521, 928 NYS2d 68 [2d Dept 2011]). Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation (*see* ***Hartfield v Seenarraine***, 138 AD3d 1060, 30 NYS3d 316 [2d Dept 2016]; ***Kuris v El Sol Contr. & Constr. Corp.***, 116 AD3d 675, 983 NYS2d 580 [2d Dept 2014]; ***Strickland v Tirino***, *supra*). Thus, in a chain collision accident, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that it was struck from behind by the rear vehicle and propelled into the lead vehicle (*see* ***Chuk Hwa Shin v Correale***, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016]; ***Niosi v Jones***, 133 AD3d 578, 19 NYS3d 550 [2d Dept 2015]; ***Kuris v El Sol Contr. & Constr. Corp.***, *supra*).

Here, the moving defendants' submissions establish, prima facie, that Monica A. Mastro was not at fault for the happening of the accident, and that defendant Georgios A. Louizos' negligence was the sole proximate cause of the accident (*see* ***Estate of Cook v Gomez***, *supra*; ***Boulos v Lerner-Harrington***, *supra*; ***Jones v Vialva-Duke***, *supra*). The affidavit of Monica Mastro demonstrates that her vehicle was struck from behind by the vehicle operated by Louizos and propelled into plaintiff's vehicle, providing a non-negligent explanation for the collision between the Shah and Mastro defendants' vehicle and plaintiff's vehicle (*see* ***Chuk Hwa Shin v Correale***, *supra*; ***Hartfield v Seenarraine***, *supra*; ***Strickland v Tirino***, *supra*). Monica Mastro states that "at the time of the accident I was stopped for a red light behind plaintiff's vehicle... I was able to bring my vehicle to a controlled and gradual stop... my vehicle was completely stopped behind plaintiff's vehicle for approximately one second when my vehicle was struck in the rear by codefendant's vehicle."

Here, the moving defendants established a prima facie entitlement to judgment as a matter of law. The codefendants and plaintiff were then required to proffer evidence in admissible form to show facts sufficient to require a trial of any issue of fact. The codefendants have submitted an affirmation of their attorney alleging that discovery has not been completed and therefore the motion should be denied. The affirmation from an attorney having no personal knowledge of the facts is without evidentiary value and, thus, is insufficient to raise a triable issue of fact (*see* ***Zuckerman v***

City of New York, *supra*). The affidavit of defendant Louizos similarly fails to raise a triable issue of fact. Furthermore, in view of the fact that defendant Louizos had personal knowledge of the relevant facts underlying the accident, the codefendants purported need to conduct discovery does not warrant denial of the motion (*see* ***Emil Norsic & Son, Inc. v L.P. Transp., Inc.,*** 30 AD3d 368, 815 NYS2d 736 [2d Dept 2006]).

In addition, as plaintiff submits no papers in opposition to the moving defendants' motion, she too fails to raise any triable issues of fact (*see see* ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, *supra*). As the opposing parties fail to submit admissible evidence that the moving defendants were contributorily negligent, they fail to rebut the moving defendants' prima facie showing that defendant Louizos' negligence was the sole proximate cause of the accident (*see* ***Estate of Cook v Gomez***, *supra*; ***Boulos v Lerner-Harrington***, *supra*; ***Jones v Vialva-Duke***, *supra*).

In light of the foregoing, the moving defendants's motion for summary judgment is granted. Counsel for the movants shall serve a copy of this order upon counsel for the plaintiff and codefendants and upon the Calendar Clerk of this court within twenty (20) days from the date of this order.

Motion to Consolidate

The plaintiffs in these actions seek recovery of damages for personal injuries sustained as the result of a chain reaction motor vehicle.

With respect to a change in venue, CPLR 503 (a) provides, in relevant part, as follows: (a) Generally. Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.

CPLR 510 provides as follows: Grounds for change of place of trial
The court, upon motion, may change the place of trial of an action where:
1. the county designated for that purpose is not a proper county; or2. there is reason to believe that an impartial trial cannot be had in the proper county; or3. the convenience of material witnesses and the ends of justice will be promoted by the change

Considering all of the above, including the fact that the instant plaintiff commenced this action first and the Queens County plaintiff have not opposed this application, this Court finds that the ends of justice will best be served by transferring the matter currently pending in Supreme Court, Queens County to Supreme Court, Suffolk County. Accordingly, defendants' application for a change of venue is granted.

CPLR § 602(a) provides that "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all of the matters in

issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Since the actions arise from the same incident and involve common questions of fact, a joint trial is appropriate to avoid inconsistent verdicts. Accordingly the for a joint trial is granted. The motion to renew and reargue is denied as moot.

Accordingly it is,

ORDERED that this unopposed motion by defendants 283 Skidmore Road, Inc., and Georgios A. Louizos for an order consolidating the instant action with an action currently pending in Supreme Court, Queens County entitled ***Monica Mastro v. 283 Skidmore Road, Inc. and Georgios Louizos***, Index No. 708512/2018, is hereby granted to the extent that the actions will be jointly tried, provided that each joined action is ready for trial when called therefor by Presiding Justice of the Calendar Control Part; and it is further

ORDERED, that venue in the action currently pending in Supreme Court, Queens County entitled ***Monica Mastro v. 283 Skidmore Road, Inc. and Georgios Louizos***, Index No. 708512/2018, including all pending motions and applications, is transferred forthwith to Supreme Court, Suffolk County; and it is further

ORDERED, that the movants shall serve a copy of this Order pursuant to CPLR 2103 upon the Clerk of the Supreme Court of Suffolk County and the Clerk of the Supreme Court of Queens County by overnight mail; and it is further

ORDERED, that the Clerk of the Supreme Court of Queens County is directed forthwith to transfer the entire case and file to the Clerk of the Supreme Court of Suffolk County; and it is further

ORDERED that each action joined for trial shall retain a separate caption and separate court costs shall be paid in each action, including those costs attendant with the filing of motions, Notes of Issue and Certificates of Readiness for Trial; and it is further

ORDERED that all motions interposed in each joined action shall bear a single caption reflecting the action in which said motion is made; however, all motions shall be served upon counsel for all parties appearing in each joined action; and it is further

The foregoing constitutes the decision and Order of this Court.

Dated: January 28, 2019

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