Short Form Order

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

PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

----------X

JULIANN GEDDES,

Plaintiff,

-against-

ANDREA M. BRIDGES and JAMES J. RUPPERT,

Defendants.

----------X

INDEX NO.: 608513/2017
CALENDAR NO.: 201802246MV
MOTION DATE: 5/2/19
MOTION SEQ. NO.: 001MG; 002MotD

PLAINTIFF'S ATTORNEYS:
Tierney & Tierney, Esqs.
409 Route 112
Port Jefferson Station, NY 11776

DEFENDANTS' ATTORNEYS:
Baxter, Smith & Shapiro, P.C.
Attorneys for Bridges
99 North Broadway
Hicksville, New York 11801

Law Office of Karen L. Lawrence
Attorneys for Ruppert
878 Vets. Mem. Hwy., Suite 100
Hauppauge, New York 11788

Upon the following papers read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers by defendant Andrea M. Bridges, dated January 30, 2019 ; Notice of Cross Motion and supporting papers by plaintiff, dated March 14, 2019; Answering Affidavits and supporting papers by defendant James J. Rupert, dated February 25, 2019; by defendant James J. Rupert, dated March 25, 2019; by defendant Andrea M. Bridges, dated April 3, 2019 ; Replying Affidavits and supporting papers by plaintiff, dated April 3, 2019; by defendant Andrea M. Bridges, dated April 3, 2019; by defendant Andrea M. Bridges, dated April 3, 2019; other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion (motion sequence no. 001) of defendant Bridges and the cross-motion (motion sequence no. 002) of plaintiff are consolidated for purposes of this determination; and it is

ORDERED that the motion (motion sequence no. 001) by defendant Andrea M. Bridges for summary judgment dismissing the complaint and cross claims against her is granted; and it is further

ORDERED that the cross motion (motion sequence no. 002) by plaintiff for, *inter alia*, for an order granting summary judgment in her favor on the issue of liability and dismissing certain affirmative defenses is granted as set forth herein, and is otherwise denied.

This is an action to recover damages for injuries allegedly sustained by plaintiff Juliann Geddes as a result of a three-vehicle accident, which occurred on Route 27 (Sunrise Highway), near its intersection with Exit 48, in the Town of Islip, New York on June 14, 2015. The accident allegedly occurred when a vehicle owned and operated by defendant James J. Ruppert ("Ruppert"), and a vehicle owned and operated by defendant Andrea M. Bridges ("Bridges") hit the rear of a vehicle operated by plaintiff. It is alleged that at the moment of the impact, plaintiff's vehicle was stopped in traffic.

Bridges now moves for summary judgment dismissing the complaint and any cross claims against her arguing that Ruppert's negligence was the sole proximate cause of the collision. In support of her motion, Bridges submits, among other things, copies of the pleadings, the bill of particulars, transcripts of the parties' deposition testimony, and photographs of the vehicles involved in the accident. Ruppert and plaintiff oppose the motion, arguing there are questions of fact concerning the number of impacts to plaintiff's vehicle and whether Bridges' vehicle impacted plaintiff's vehicle.

Plaintiff testified that she was traveling eastbound on Sunrise Highway when traffic ahead stopped; so, she brought her vehicle to a stop. She testified that as her vehicle was stopped on the roadway, it was struck in the rear by another vehicle. She testified that two seconds after the first impact, there was a second impact to the rear of her vehicle. In her deposition, plaintiff described the first impact as medium and the second impact as heavy. She also testified that she was wearing her seatbelt at the time of the accident. Plaintiff further testified that defendant Ruppert apologized and said, "I didn't see you. I wasn't paying attention."

Bridges testified that her vehicle was traveling in the right eastbound lane when an impact occurred between her vehicle and a vehicle operated by Ruppert. She testified that her vehicle was completely stopped for approximately three to five seconds before the impact occurred. She testified that her vehicle was struck in the rear by another vehicle and that the force of the impact pushed her vehicle into the middle and left eastbound lanes on Sunrise Highway.

Ruppert testified that he was traveling in his vehicle in the right eastbound lane the entire time he was on Sunrise Highway. Ruppert testified that he came over a crest on Sunrise Highway and he observed traffic ahead had stopped. He testified that he observed a vehicle 50 feet away from his vehicle stopped in the right eastbound lane. Ruppert testified that when he first saw the vehicle in front of him in the right eastbound lane it was stopped. He testified that he applied his vehicle's brakes but his vehicle skidded on the roadway and it struck that vehicle.

It is well settled that the proponent of a summary judgment motion bears the initial burden of establishing his or her entitlement to judgment, as a matter of law, in his or her favor by offering admissible evidence sufficient to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York*

Univ. Med. Ctr., 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v City of New York,* 49 NY2d 557, 427 NYS2d 595 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of any opposition thereto (*Winegrad v New York Univ. Med. Ctr.*, *supra*). Once the movant has made the requisite showing, the burden then shifts to the opposing party, requiring him or her to present admissible evidence and facts sufficient to require a trial on any issue of fact (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v City of New York*, *supra*). On such a motion, the court is charged with determining whether issues of fact exist while viewing any evidence in a light most favorable to the nonmoving party; the court is not responsible for resolving issues of fact or determining matters of credibility (*see Chimbo v Bolivar*, 142 AD3d 944, 37 NYS3d 339 [2d Dept 2016]; *Pearson v Dix McBride, LLC*, 63 AD3d 895, 883 NYS2d 53 [2d Dept 2009]; *Kolivas v Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2d Dept 2005]). A motion for summary judgment should be denied where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (*see Chimbo v Bolivar*, *supra*; *Benetatos v Comerford*, 78 AD3d 730, 911 NYS2d 155 [2d Dept 2010]).

"A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence with respect to the operator of the moving vehicle, and imposes a duty on the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident" (*Ramirez v Konstanzer*, 61 AD3d 837, 837, 878 NYS2d 381 [2d Dept 2009], quoting *Arias v Rosario*, 52 AD3d 551, 552, 860 NYS2d 168 [2d Dept 2008]). A driver following behind another must maintain a reasonably safe rate of speed and distance to avoid colliding with the preceding vehicle (*Cajas-Romero v Ward*, 106 AD3d 850, 965 NYS2d 559 [2d Dept 2013]; *see* Vehicle and Traffic Law §1129 [a]).

"[V]ehicle 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 car and the car ahead" (*Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564, 565, 719 NYS2d 287 [2d Dept 2001]; *see* Vehicle and Traffic Law §1129 [a]). However, the preceding driver also has the duty to "not stop suddenly or slow down without proper signaling so as to avoid a collision" (*Drake v Drakoulis*, 304 AD2d 522, 523, 756 NYS2d 881 [2d Dept 2003], quoting *Niemiec v Jones*, 237 AD2d 267, 268, 654 NYS2d 163 [2d Dept 1997]; *see Balducci v Velasquez*, 92 AD3d 626, 938 NYS2d 178 [2d Dept 2012]; *see* Vehicle and Traffic Law §1163). Thus, a conclusory assertion that "the driver of the [preceding] vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (*Ramirez v Konstanzer*, *supra*, quoting *Russ v Investech Securities,* Inc., 6 AD3d 602, 602, 775 NYS2d 867 [2d Dept 2004]; *see Shamah v Richmond County Ambulance Serv.*, *supra*).

Bridges has established her *prima facie* entitlement to summary judgment in her favor on the issue of negligence since the deposition testimony of Ruppert established that Bridges'

vehicle was hit in the rear by Ruppert's vehicle while completely stopped due to traffic conditions, and the photograph of Bridges' vehicle taken after the accident shows that her vehicle sustained no front-end damage (*see Shamah v Richmond County Ambulance Serv.*, *supra*). Having made the requisite *prima facie* showing of entitlement to summary judgment, the burden shifts to plaintiff and Ruppert to rebut the presumption of negligence by offering a non-negligent explanation for the occurrence of the accident (*see Gallo v Jairath*, 122 AD3d 795, 996 NYS2d 682 [2014]; *Singh v Avis Rent A Car System, Inc.*, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]; *Williams v Spencer-Hall*, 113 AD3d 759, 979 NYS2d 157 [2d Dept 2014]; *Balducci v Velasquez*, *supra*). Neither plaintiff nor Ruppert have raised a triable issue of fact. The affirmations of plaintiff's and Ruppert's attorneys are insufficient to defeat summary judgment since neither attorney has personal knowledge of the facts (*see Gallo v Jairath*, *supra*; *Williams v Spencer-Hall*, *supra*). Accordingly, the motion by Bridges for summary judgment dismissing the complaint and any cross claims against her is granted.

Plaintiff also moves for summary judgment in her favor on the issue of liability on the ground that defendants violated Vehicle and Traffic Law §1129. In support of the motion, plaintiff submits, *inter alia*, copies of the pleadings, the transcripts of the parties' deposition testimony, and a police accident report. Defendants oppose the motion, arguing triable issues exist as to how the accident occurred, whether plaintiff was paying attention to the conditions of the roadway at the time of the collision, and, if so, whether plaintiff was comparatively negligent for the happening of the accident.

A plaintiff is no longer required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability in a car accident case (*see Rodriguez v City of New York*, 31 NY3d 312, 76 NY3d 898 [2018]; *Poon v Nisanov*, 162 AD3d 804, 79 NYS3d 227 [2d Dept 2018]; *Otella v Rodriguez*, 165 AD3d 826, 85 NYS3d 560 [2d Dept 2018]). Here, plaintiff met her *prima facie* burden on the motion by submitting sufficient evidence that Ruppert's negligence was the sole proximate cause of the accident (*see McLaughlin v Lunn*, *supra*; *Williams v Spencer-Hall, supra*; *Cajas-Romero v Ward, supra*). Significantly, plaintiff testified at her examination before trial that she was stopped in traffic when a vehicle operated by Ruppert struck her vehicle in the rear. Moreover, Ruppert admitted in his own deposition testimony that plaintiff's vehicle was stopped when his vehicle struck it in the rear. The burden, therefore, shifted to Ruppert to submit evidentiary proof in admissible form to raise a triable issue of material fact (*see Zuckerman v City of New York, supra*).

In opposition, Ruppert failed to raise any significant triable issues warranting denial of the motion (*see McLaughlin v Lunn*, *supra*; *Williams v Spencer-Hall*, *supra*; *Cajas-Romero v Ward, supra*). Notably, Ruppert failed to submit an affidavit challenging plaintiff's account of how the accident occurred; and the conclusory affirmation by his attorney is insufficient to defeat plaintiff's *prima facie* showing (*see Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439,

45 NYS3d 864 [2016]; *Adamson v Evans*, 283 AD2d 527, 724 NYS2d 760 [2d Dept 2001]). Furthermore, as indicated above, a plaintiff is no longer required to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability in a car accident case (*see Rodriguez v City of New York*, *supra*; *Otella v Rodriguez*, *supra*). Accordingly, the branch of the motion by plaintiff for summary judgment in her favor on the issue of liability is granted.

In view of the determination that Ruppert's negligence was the sole proximate cause of plaintiff's accident, the branch of plaintiff's motion seeking an order compelling disclosure of Ruppert's cell phone records is denied. For the same reason, the branches of plaintiff's motion seeking dismissal of Bridges' first and second affirmative defenses are denied, as moot. Likewise, the branch of plaintiff's motion seeking to dismiss Ruppert's first affirmative defense, which alleges comparative negligence, is granted. Furthermore, as Bridges and Ruppert failed to submit evidence controverting plaintiff's deposition testimony that she was wearing a seat belt at the time of the collision, the application to dismiss Ruppert's seventh affirmative defense is granted (*see Smith v Kinsey*, 50 AD3d 1456, 858 NYS2d 495 [4th Dept 2008]; *Garcia v Tri County Ambulette Serv.*, 282 AD2d 206, 723 NYS2d 163 [1st Dept 2001]; *Rockman v Brosnan*, 242 AD2d 695, 663 NYS2d 53 [2d Dept 1997]; *Desola v Mads, Inc.*, 213 AD2d 445, 623 NYS2d 889 [2d Dept 1995]).

Dated: February 3, 2020

J.S.C.