At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 23rd day of January 2020.

P R E S E N T:

HON. LARA J. GENOVESI,
J.S.C.

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JUNE JACK,

Plaintiff,

Index No.: 523449/2017

DECISION & ORDER

-against-

ROYAL WASTE SERVICES, INC., and KENROY F. BECKFORD, DELLON E. JACK and MARK A. STEPHENSON

Defendant(s).

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KINGS COUNTY CLERK
FILED
2020 JAN 24 AM 8:51

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	NYSCEF Doc. No.:
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed	27-35, 36-38
Opposing Affidavits (Affirmations)	40-44
Reply Affidavits (Affirmations)	45-46
Other Papers:	

Introduction

Defendants, Dellon E. Jack (Jack) and Mark A. Stephenson (Stephenson) move by motion sequence two for summary judgment dismissing the complaint and all cross claims. Plaintiff, June Jack (June) cross moves, motion sequence three, for summary

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judgment on the issue of liability against defendants Royal Waste Services, Inc., (Royal Waste) and Kenroy F. Beckford (Beckford), severing the action and setting it down for an immediate trial on damages. Defendants Kenroy F. Beckford and Royal Waste Services, Inc. oppose this motion.

Background

This action is based on a motor vehicle accident that occurred on June 22, 2017 at Linden Boulevard and Van Siclen Avenue. This was a three car rear-end collision. Vehicle one was driven by non-party Derrick Alvarez; vehicle two was owned by defendant Mark A. Stephenson, driven by Dellon E. Jack, with plaintiff June Jack and plaintiff in action 514826/2017, Carol Scott as passengers; vehicle three was owned by defendant Royal Waste and driven by defendant Beckford.

Discussion

The Appellate Division, Second Department recently held that

> "A plaintiff is no longer required to show freedom from comparative fault to establish a prima facie entitlement to judgment as a matter of law on the issue of liability. A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle. A rear-end collision with a stopped or stopping vehicle established a prima facie case of negligence on the part of the operator of the rear vehicle, hereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision. Although a sudden stop of the lead vehicle may constitute a non-negligent explanation for a rear end collision, vehicle stops which are foreseeable under the prevailing traffic conditions even if sudden and frequent, must be anticipated by the driver who follows"

(X*in Fang Xia v. Saft*, 173 A.D.3d 823 [2 Dept., 2019] [internal citations omitted]).

In this case defendants Dellon Jack and Mark Stephenson met their burden. Jack stated by affidavit that at the time of the accident he gradually brought his vehicle to a complete stop at the red light on Linden Boulevard. He was stopped when the rear of his vehicle, vehicle two, was struck by the front of the Royal Waste and Beckford vehicle, vehicle three.

Plaintiff, June Jack, by her attorney's affirmation, adopted all arguments proffered by defendants Dellon Jack and Mark Stephenson. Plaintiff averred that she was an innocent passenger in this accident and that if liability cannot be found against the vehicle she was riding in, liability cannot be found against her. "The right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers" (*Romain v. City of New York,* 177 A.D.3d 590, 112 N.Y.S.3d 162 [2 Dept., 2019]). Here, plaintiff made a prima facie showing of entitlement to summary judgment. Plaintiff may rely on the inference that Royal Waste and Beckford were negligent. It is uncontested that the injured plaintiff was a passenger seated in vehicle two. While the drivers in the accident submitted affidavits in which each maintained that they were free from fault, neither driver suggested the plaintiff passenger bore any fault in the collision (*see Phillip v. D&D Carting Co., Inc.,* 136 A.D.3d 18, 22 N.Y.S.3d 75 [2 Dept., 2015] [plaintiff was not entitled to summary

judgment on the issue of liability against defendants as defendants raised a triable issue of fact]).

In opposition Royal Waste by Beckford state that the emergency doctrine applies here because vehicle two made a sudden lane change in front of its vehicle, vehicle three. "In general, the emergency doctrine does not apply to typical accidents involving rear end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead of them. A trailing driver's conduct in failing to leave a reasonable distance creates the possibility that a sudden stop will be necessary" (*Shehab v. Powers* 150 A.D.3d 918, 54 N.Y.S.3d 104 [2 Dept., 2017] [internal citations omitted]). The emergency doctrine doesn't apply here where a lane change and a light turning red are known foreseeable hazards which Beckford observed prior to the accident (*see Freder v. Costello Industries,* 162 A.D.3d 984, 80 N.Y.S.3d 371 [2 Dept., 2018]). The defendant's version of the facts does not raise a triable issue of fact as to the existence of a non-negligent explanation for the rear end collision.

Defendants Beckford and Royal Waste further argue that this motion is premature since the parties have not been deposed. "A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence. The mere hope or speculation that evidence sufficient to defeat a motion may be uncovered during discovery is insufficient to deny the motion" (*Rungoo v. Leary*, 110 A.D.3d 781, 972 N.Y.S.2d 672 [2 Dept., 2013] [internal citations omitted]). It is undisputed that vehicle two was stopped, in front of vehicle three, for a red light. It is also undisputed that vehicle three rear ended vehicle two. The sole issue raised by

vehicle three is that vehicle two made a sudden lane change. However, this was not a side swipe, the vehicles made contact directly in the center of the rear and front of the respective vehicles. Both vehicle two and vehicle three's drivers provided affidavits herein, both are parties with knowledge of the facts. Accordingly, this Court rejects defendant's contention that this motion is premature.

Conclusion

Accordingly, defendants Dellon Jack and Mark Stephenson's motion for summary judgment is granted in its entirety. Plaintiff, June Jack's motion for summary judgment as to liability against defendants Royal Waste and Kenroy Beckford is granted in its entirety.

ENTER:

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J.S.C.

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