SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: *HON. UTE WOLFF LALLY,*

Justice

TRIAL/IAS, PART 17
NASSAU COUNTY

MICHAEL LEVY,

Plaintiff(s),

-against-

MOTION DATE: 10/24/01
INDEX No.:12703/00
MOTION SEQUENCE NO:1,2,3

CAL. NO.:2001H43444

JOAN G. WUNK, STEPHEN P. PELLICANI, ANA M. EICHENBERGER and OSCAR A. ROMERO,

Defendant(s).

The following papers read on this motion:

Notice of Motion/ Order to Show Cause.....	1-3
Notice of Cross Motion.....	4-6
Notice of Cross Motion.....	7-9
Answering Affidavits.....	10-13
Replying Affidavits.....	14,15
Briefs:	

Upon the foregoing papers, it is ordered that this motion by defendant Pellicani and cross motion by defendants Eichenberger and Romero for an order pursuant to CPLR 3212 granting summary judgment in their favor dismissing plaintiff's complaint; and second cross motion by plaintiff for an order pursuant to CPLR 3212 granting partial summary judgment in his favor on the issue of liability only and directing a trial on the issue of damages are granted to the extent noted below.

This is an action to recover money damages for personal injuries allegedly sustained by plaintiff, a passenger in the first car of a three car chain reaction accident, which occurred on Sunrise Highway in the vicinity of its intersection with Denton Avenue, Lynbrook, New York on April 18, 2000, at about 6:00 p.m. Plaintiff was a passenger in the motor vehicle owned by defendant Eichenberger and operated by defendant Romero, which was stopped in the left westbound lane of Sunrise Highway when it was struck in the rear by the motor vehicle operated by defendant Pellicani, which it is claimed was stopped behind the Romero vehicle when it was struck in the rear by the motor vehicle owned and operated by defendant Wunk.

Defendants Pellicani, Eichenberger and Romero have moved for summary judgment dismissing the plaintiff's complaint and all cross claims. Plaintiff opposes these motions and seeks partial summary judgment on the issue of liability only against all of the defendants.

Defendant Wunk opposes the motions claiming that she struck the Pellicani vehicle in the rear when it stopped suddenly after striking the Romero vehicle in the rear. This is based upon Wunk's testimony at the examination before trial and statement given to a police officer at the scene of the occurrence. Upon further examination, Wunk testified that she never saw the impact between the two cars ahead of her and that it looked like he stopped short after hitting the car in front. She further states that she did not hear that earlier impact.

Defendant Pellicani asserts that he was stopped as was the car in front when he was hit with such force that he was caused to strike the car in front.

Defendant Romero and the plaintiff testified that the vehicle they were in was stopped when there was a single impact to the rear of their car.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence" requiring judgment for the driver and/or passenger of the stopped vehicle unless the operator of the moving vehicle can proffer "a non-negligent explanation" for his/her "failure to maintain a safe distance between cars." It is not a sufficient claim that the vehicle in front "stopped short" (Mitchell v. Gonzalez, 269 AD@d 250, 251). In the Second Department it is clear that the rule is that a claim of a sudden stop is insufficient to defeat a prima facie case of negligence involving a read end collision with a stopped vehicle (see McKeough v Rogak, __AD2d__, 2001 WL 1402906; Girolamo v Liberty Lines Trans, 284 !D2d 371; Dileo v Greenstein, 281 AD2d 586; Shamah v Richmond County Ambulance Service, 279 AD2d 564; Shamah v. Richmond County Ambulance Service, 279 AD2d 564; Lifshits v. Variety Poly Bags, 278 AD2d 372; Cacace v. DiStefano, 276 AD2d 457; Tricoli v. Malik, 268 AD2d 469; Levine v. Taylor, 268 AD2d 566).

Here, defendant Wunk's only possible "non-negligent explanation" is that the Pellicani vehicle struck the Romero vehicle in the rear, causing the sudden stop. That is still a sudden stop. Therefore, as a matter of law, defendant Wunk is negligent. Where there is a possible question of fact requiring trial is whether a possible earlier impact caused the injury. An evaluation of all of the testimony herein is consistent with a "chain reaction" accident, except the portion argued on behalf of defendant Wunk. Her testimony that there was an impact prior to

her impact with Pellicani appears to be nothing more than her assumption. The court makes that finding based upon her admission that she did not see that impact nor hear an earlier impact.

Therefore, the motion and cross motion seeking dismissal of plaintiff's complaint against the moving defendants are granted. So much of plaintiff's cross motion which seeks partial summary judgment on the issue of liability only against defendant Wunk is granted and a trial on the assessment of damages is granted. The remainder of the cross motion is denied.

Dated: DEC 7 2001

J.S.C.

ENTERED

DEC 11 2001

NASSAU COUNTY
COUNTY CLERK'S OFFICE

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