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SHORT FORM ORDER mg

SUPREME COURT - STATE OF NEW YORK

Present:

HON. UTE WOLFF LALLY,

Justice

TRIAL/IAS, PART 8
NASSAU COUNTY

DONNA MIRO,

Plaintiff(s),

MOTION DATE:3/27/07
INDEX No. 1590/07
SEQ NO. 1

-against-

DANIELLE REINA and JOHN REINA,

Defendant(s).

The following papers read on the motion for summary judgment:

Notice of Motion/ Order to Show Cause.....	1-4
Answering Affidavits.....	5-7
Replying Affidavits	8,9
Briefs:	

Upon the foregoing papers, it is ordered that this motion by plaintiff for an order pursuant to CPLR 3212 granting summary judgment in her favor on the issue of liability only, permitting her to enter an interlocutory judgment in her favor against the defendants, and ordering a trial in the nature of an assessment of damages, is granted.

This is an action seeking to recover money damages for personal injuries allegedly sustained as the result of a rear end collision that occurred on September 8, 2006 on Merrick Road at or near its intersection with Whitewood Drive, Massapequa, New York.

In support of her motion plaintiff has proferred her own affidavit which states in pertinent part: "As I was at a complete stop for a red light I was hit in the rear by the defendants' vehicle bearing license plate number CMV 9745. The impact pushed my vehicle into the vehicle in front of me. As a result, I sustained personal injuries."

In addition, plaintiff proferred the Police Accident Report prepared by Police Officer Hudson, which in the "Accident Description/Officer's Notes" section states as follows: "M.V.1

struck the rear of M.V. 2 which was then pushed forward in the rear of M.V.3. M.V.1 op [defendant Danielle M. Reina] states she made a right turn on to Merrick Rd and did not realize the traffic ahead had come to a stop for a red light and was unable to avoid striking ...."

In opposition to the motion defendants have proferred the affidavit of Danielle Reina in which she states in pertinent part: "I entered Merrick Road. I was on my way home. The first intersection I approached was on Merrick Road, at Whitewood Drive. There, another car was in front of me in the same lane, going in the same direction. Then this car came to an abrupt stop.... The front of my car struck the rear of the car that stopped abruptly."

"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 AD2d 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 rear end collision with a stopped vehicle (see McKeough v Rogak, 288 AD2d 196, lv to appeal den'd 98 NY2d 601; Girolamo v Liberty Lines Trans, 284 AD2d 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).

Moreover, in multiple-car, chain-reaction accidents the courts have recognized that the operator of a vehicle which has come to a complete stop and is propelled into the vehicle in front of it as a result of being struck from behind is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (See, e.g., Lehmann v. Sheaves, 231 AD2d 687, 688; Arrastia v. Sbordone, 225 AD2d 375, 638 NYS2d 659; Chamberlin v. Suffolk County Labor Dept., 221 AD2d 580, 581; Smith v. Cafiero, 203 AD2d 355, 355-356).

Absent an exonerating excuse, under New York Law, failure to maintain a safe distance between the operator's vehicle and the vehicle ahead constitutes negligence as a matter of law (Vehicle & Traffic Law Sec. 1129[a]). An operator has a duty to remain vigilant to the movement of the car ahead when approaching from the

rear and to operate his vehicle at a safe rate of speed and in a manner so as to avoid colliding with the preceding vehicle (Young v. City of New York, 113 AD2d 833). Further, absent excuse, it is negligence as a matter of law if a stopped car is hit in the rear (Cohen v. Terranella, 112 AD2d 264; DeAngelis v. Kirschner, 171 AD2d 593).

It is well settled that on a motion for summary judgment to dismiss the complaint, the movant must establish his or her defense sufficiently to warrant a court's grant of judgment in his or her favor as a matter of law (See, Zuckerman v. City of New York, 49 NY2d 557, 562). The initial burden is on the movant to establish by means of admissible evidence his or her prima facie entitlement to judgment as a matter of law (See, McCormack v. Graphic Mach. Servs., 139 AD2d 631, 632).

Plaintiff herein has made a Prima Facie showing of entitlement to the relief sought and defendants have failed to demonstrate the existence of a triable issue of fact. Therefore, plaintiff is entitled to summary judgment in her favor on the issue of liability only.

Counsel shall proceed on any discovery on the issue of damages and a certification conference shall be held at Part 8 on September 12, 2007 at 9:30 a.m.

Dated: MAY 18 2007

J.S.C.

ENTERED
MAY 23 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE