

SLAN

SHORT FORM ORDER

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

STEPHEN HOFFMAN,

TRIAL/IAS PART 15

Plaintiff(s),

INDEX NO. 13032/00

- against -

MOTION SEQUENCE
NO. 4

BRADCO SUPPLY CORP., EUGENE P. PARRINGTON
and DONNA M. ORELLANO,

MOTION SUBMISSION
DATE: November 19, 2003

Defendant(s).

The following papers read on this motion:

Notice of Motion	X
Affirmation in Opposition	X
Reply Affirmation	X

Upon the foregoing papers, the motion by plaintiff for an Order pursuant to CPLR 3212 granting the plaintiff summary judgment on the issue of negligence against the defendants, Bradco Supply Corp. and Eugene Parrington, is determined as hereinafter provided:

This personal injury action arises out of a motor vehicle accident involving three motor vehicles which occurred on March 9, 2000 at approximately 1:55 p.m. in the southern eastbound lane on Hempstead Turnpike approximately 300 yards west of Wantagh Avenue in Levittown, New York. The first vehicle was driven by the defendant Donna M. Orellano; the second vehicle by the plaintiff Stephen Hoffman and the third vehicle owned by the defendant Bradco Supply Corp., was driven by the defendant Eugene P. Parrington.

Initially, the Court observes that there is no submission by the plaintiff and/or the defendants Bradco Supply Corp. and Eugene P. Parrington of a deposition transcript of Donna M. Orellano.

On the day of the motor vehicle accident in issue, the plaintiff was driving a van eastbound on Hempstead Turnpike (see deposition transcript of Stephen Hoffman at pgs. 19 and 21). The weather conditions were clear and dry (see deposition transcript of Stephen Hoffman at pg. 17). The plaintiff's rate of speed was 30 to 35 MPH (see deposition transcript of Stephen Hoffman at pg. 65) and the plaintiff was approximately three car lengths behind the defendant Donna M. Orellano's vehicle (see deposition transcript of Stephen Hoffman at pg. 66) when the Orellano vehicle came to a very abrupt stop (see deposition transcript of Stephen Hoffman at pg. 95). The plaintiff contends that he forcefully applied the brakes (see deposition transcript of Stephen Hoffman at pg. 65) and struck the Orellano vehicle at approximately 9 MPH

(see deposition transcript of Stephen Hoffman at pg. 67). As a result of that impact the plaintiff's vehicle was stopped (see deposition transcript of Stephen Hoffman at pg. 25). The defendant Bradco Supply Corp's vehicle was being driven by the defendant Eugene P. Parrington (see deposition transcript of Eugene P. Parrington at pg. 4). The gross weight of the vehicle was approximately 25,000 pounds (see deposition transcript of Bradco Supply Corp. by Eugene P. Parrington at pg. 14). The defendant Bradco Supply Corp's vehicle was traveling at approximately 35 to 40 MPH (see deposition transcript of Eugene P. Parrington at pg. 53) approximately 30 to 40 feet behind the Hoffman vehicle (see deposition transcript of Eugene P. Parrington at pg. 53) when Mr. Parrington saw the brake lights on the Hoffman vehicle (see deposition transcript of Eugene P. Parrington at pg 53). Notwithstanding, the application of brakes (see deposition transcript of Eugene P. Parrington at pg. 54) the Bradco Supply Corp. vehicle struck the Hoffman vehicle (see deposition transcript at pg. 58).

In examining the issue of rear end collisions, the Court in **Johnson v Phillips**, 261 AD2d 269, 690 NYS2d 545 (First Dept., 1999) stated:

"Drivers must maintain safe distances between their cars and cars in front of them (*Vehicle and Traffic Law §1129[a]*) and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages (*Sass v Ambu Trans Inc.*, 238 AD2d 570, 657 NYS2d 69). As we have phrased it, drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*DeAngelis v Kirschner*, 171 AD2d 593, 567 NYS2d 457). By now it is well established that a rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the operator of the second vehicle. This rule has been applied when the front vehicle stops suddenly in slow-moving traffic (*Mascitti v Greene*, 250 AD2d 821, 673 NYS2d 206), even if the sudden stop is repetitive (*Leal v Wolff, supra*), when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection (*Barba v Best Sec. Corp.*, 235 AD2d 381, 652 NYS2d 71), and when the front car stopped while after having changed lanes (*Cohen v Terranella*, 112 AD2d 264, 491 NYS2d 711). When such a rear-ended collision occurs, the injured occupants of the front vehicle are entitled to summary judgment on liability, unless the driver of the following vehicle can provide a non-negligent explanation, in evidentiary form, for the collision (*Leal, supra; Barba, supra; Mascitti, supra; Cohen, supra; Silberman v Surrey Cadillac Limousine Serv. Inc.*, 109 AD2d 833, 486 NYS2d 357)."

Johnson v Phillips, supra at pg. 547

Based upon a review of the respective submissions and the deposition transcripts as set forth heretofore, the defendants Bradco Supply Corp. and Eugene P. Parrington have not offered a non-negligent explanation for the rear end collision in issue. Accordingly, the plaintiff's application for an Order pursuant to CPLR 3212 granting the plaintiff summary judgment on the issue of negligence against the defendants, Bradco Supply Corp. and Eugene Parrington, is **granted**.

The issue of damages is referred to the trial of the action.

SO ORDERED.

DATED: *2/3/2004*

ENTERED

FEB 09 2004

Lois G. Mahon

J.S.C.

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**