SHORT FORM ORDER

SCAN

SUPREME COURT - STATE OF NEW YORK

Present:

HON. DANIEL PALMIERI
Acting Justice Supreme Court

----------x	**TRIAL PART: 35**
TYRONE LITTLE, ANGEL COLBERT, an infant by her mother and natural guardian, JANET M. CARTER-LITTLE and JANET M. CARTER-LITTLE, Individually,	**NASSAU COUNTY**
Plaintiffs,	**INDEX NO: 00-008918**
-against-	**MOTION DATE: 5-24-01**
CNR REFRIGERATION CO., ROBERT J. YOPP., JR. AND BRUCE L. WILLIG,	**MOTION SEQ. #: 001**
Defendants, ----------x	

The following papers having been read on this motion:

Notice of Motion, dated 4-27-01	**1**
Notice of Cross-Motion, dated 5-16-01	**3**
Affirmation in Opposition, dated 6-08-01	**2**
Reply Affirmation, dated 6-12-01	**4**

Upon the foregoing papers, it is ordered that the motion by Tyrone L, Angel Colbert, an infant by her mother and natural guardian, and Janet M. Carter-Little , Individually, plaintiffs, and cross motion by, defendant Bruce C. Willig for summary judgment pursuant to CPLR § 3212 on the issue of liability and dismissing all claims and cross claims against them are granted.

On a motion for summary judgment the movant must establish his or her cause of action or defense sufficient to warrant a court directing judgment in its favor as a matter of law (*see Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 (1988); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986), *Rebecchi v. Whitmore*, 172 AD2d 600, (2nd Dept. 1991).

"The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact" (Frank Corp. v. Federal Ins. Co., supra at 967; *GTF Mktg. V. Colonial Aluminum Sales*, 66 NY2d 965 (1985), *Rebecchi v. Whitmore*, *supra* at 601.

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the Court deciding this type of motion is not to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist (see *Barr v. County of Albany*, 50 NY2d 247 (1980); *Daliendo v. Johnson*, 147 AD2d 312, 317 (2nd Dept. 1989)].

The movants' submissions in support of both the motion and cross motion established their entitlement to judgment thus shifting the burden to the opponents to rebut the movants' case by submitting proof in evidentiary form showing the existence of triable issues of fact. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Friends of Animals v. Associated Fur Manufacturers, Inc.*, 46 NY2d 1065 (1979). Here, defendants CNR Refrigeration Co., and Robert J. Yopp, Jr., have failed to establish the existence of triable issues of fact and the motions are granted on the issue of liability only (not serious injury) and all affirmative defenses as to liability are dismissed.

Based upon this record, the Court finds no material fact issues requiring a trial with respect to the actions among these parties' involvement in the cause of the accident. The parties submit copies of the pleadings, affidavits from both operators of the first two vehicles and a copy of the police report which contains a quoted statement from the operator of the third vehicle in support of their positions. The admission against interest

quoted in the police report, made by the defendant and operator, Yopp, is "It's my fault I couldn't stop in time".

The undisputed facts are that this action arises from a three car hit in the rear collision which occurred on June 27, 1997 at approximately 1:50 p.m. The first two vehicles had come to a complete stop in heavy traffic on Fulton Avenue in Hempstead. The third vehicle owned by CNR Refrigeration and operated by Robert J. Yopp., Jr., struck the rear of the stopped vehicle owned and operated by defendant Bruce Willig , pushing that vehicle into the rear portion of the stopped vehicle owned by plaintiff Janet Carter- Little and operated by plaintiff Tyrone Little.

In response to the motions, defendants CNR Refrigeration Company and Robert J. Yopp, Jr., fail to rebut the facts surrounding the happening of this accident but merely argue that the motion is premature as discovery has not yet been completed. The court notes no affidavit is offered by either the owner or operator of the alleged offending vehicle. No attempt is made to attribute liability against any other person or party and no defense is even offered.

Defendant's contention that because discovery has not yet been completed, the motions are premature, is rejected. *Morissant v. Raemer Corp.* 271 AD2d 586 (2nd Dept, 2000). The belief that additional discovery might reveal something helpful to a litigant does not provide a basis for postponing a determination of summary judgment. See, CPLR 3212(f), *Morissant v. Raemer Corp.*, supra. Viewing the evidence in the light most favorable to the opposing parties and according them every reasonable inference, the Court finds that a jury could not find negligence on the part of either defendant, Willig or plaintiff, Tyrone Little. Additionally, the Court finds that there are no material factual

issues as to their culpability. As a matter of law of stopping, behind a car which had stopped in traffic so as to maintain a safe distance between their own vehicle and the car in front of them cannot be considered negligent. *Lifshits* v. *Variety*, 717 NYS2d 630 (__Ad2__ 2nd Dept., 2000). Defendant Yopp, was under a duty to maintain a safe distance between his vehicle and the vehicle operated in front of him. (See Vehicle and Traffic Law § 1129 [a]).

When applying the principles previously cited, the undisputed parties testimony that vehicle one and two were completly stopped in traffic, vehicle two stopped behind the first car, was struck in the rear by defendant Yopp, pushing it into vehicle one, is sufficient to grant the motions.

A rear-end collision with an automobile establishes a prima facie case of negligence and imposes a duty on the operator of the following vehicle to explain how the accident occurred. Here, defendants CNR Refrigeration Company and Yopp have failed to come forward with any evidence to inculpate negligence on the part of Little or Willig and they are entitled to judgment as a matter of law. *Benvarko v. Avis Rent a Car System*, 162 AD2d 572 (1990); *Abramowicz v. Roberto*, 220 AD2d 374 (1995); *Leal v. Wolff*, 224 AD2d 392 (1996). If the operator of the moving vehicle cannot come forward with any evidence to rebut the inference of negligence, the operator of the stationary vehicle may properly be awarded summary judgment on the issue of liability. *Leonard v. City of New York*, 708 NYS2d 467 (2nd Dept. 2000), citations omitted. The foregoing uncontroverted facts clearly establish that the negligence of defendant Yopp was the sole and only cause of the accident and the motion and cross motion are granted.

As this case has not been certified for trial and there has apparently been no

discovery as to the issues of serious injury and damages, all parties are directed to appear for a Discovery Scheduling conference in this part on July 16, 2001 at the Nassau County Court House, 262 Old Country Road, Mineola, NY at 9:30 A.M.

This constitutes the Decision and Order of this Court.

ENTER

DATED: June 21, 2001

HON. DANIEL PALMIERI
Acting J.S.C.

TO: RAPPAPORT, GLASS, GREENE & LEVINE, LLP
Attorneys for Plaintiffs
445 Broad Hollow Road, Rt 110
Melville, NY 11747
ATT: CHARLES J. RAPPAPORT, ESQ.

LAW OFFICES OF BRUCE A. LAWRENCE
Attorneys for Defendants, CNR Refrigeration & YOPP
1 MetroTech Center North, 11th Floor
Brooklyn, NY 11201-3857
ATT: COLIN MARVILLE, ESQ.

RUSSO, APOZNANSKI & HELLREICH
Attorneys for Defendants
760 Woodbury Road
Woodbury, New York 11797
ATT: SUSAN J. MITOLA, ESQ.