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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU

PRESENT: HON. ANTHONY L. PARGA, J.S.C.
Part 17

JANET MARACIC and ANTHONY MARACIC,

Plaintiffs,

-against-

JOSEPH ZAYAS and CHARLES APPICE,

Defendants.

Index No. 231/03
Motion Date: 5/25/05
Sequence No. 004

Notice of Motion, Affs. & Exs. 1
Affirmation in Opposition & Exs. 2
Reply Affirmation & Exs. 3

Upon the foregoing papers, the motion by the motion by plaintiffs Janet Maracic and Anthony Maracic for an order pursuant to CPLR 3126 striking defendants' Answer, or in the alternative, an order pursuant to CPLR 3212 granting them partial summary judgment on the issue of liability, is granted in its entirety.

In this action, the plaintiffs seek to recover damages for, *inter alia*, personal injuries plaintiff Janet Maracic suffered as a result of a motor vehicle accident on October 27, 2001. It is not disputed that Mrs. Maracic was stopped at a red light on Merrick Avenue in Massapequa Park when her car was struck in the rear by a car owned by defendant Joseph Zayas and driven by defendant Charles Appice.

In their March 12, 2004 Notice for Discovery and Inspection, plaintiffs requested:

> Copies of all policies of motor vehicle insurance that were in effect on 10/27/01 **for all members of defendant Joseph Zayas' household**; and

Copies of all policies of motor vehicle insurance that were in effect on 10/27/01 **for all members of defendant Charles Appice's household.**

By order dated January 9, 2005, this court directed that "defendants' Answer shall be stricken unless the defendants fully respond to and furnish the discovery requested in plaintiffs' March 12, 2004 discovery notice within 20 days after service of a copy of this order on defendants' attorneys". Despite service of that order, defendants did not respond and this motion was made. In response, Joseph Zayas has submitted an affidavit in which he states that "at the time of this incident, I did not maintain any excess insurance coverage". Not only is this response impermissibly and inexplicably late, it is not responsive to the demand. Defendant Charles Appice's wife has also submitted an affidavit in which she similarly states "that at the time of this incident all vehicles were insured under one policy of insurance, State Farm. That at the time of this incident we did not maintain any other excess and/or umbrella coverage". Again, this response is not only impermissibly and inexplicably late, it, too, is not entirely responsive to the demand. Plaintiffs' entitlement to this information has already been established and defendants' failure to produce has gone unexplained. As the Court of Appeals stated in *Kihl v. Pfeffer*, (94 NY2d 118, 123), "[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity . . . . [C]ompliance with a disclosure order requires both a timely response and one that evinces a good-faith effort to address the request meaningfully". Plaintiffs' motion to strike defendants' Answer is granted and defendants Zayas and Appice's Answer is stricken.

In any event, the plaintiffs are entitled to partial summary judgment on the issue of liability. "It is well settled that a rear-end collision with an automobile stopped for a red light creates 'an inference of negligence and a *prima facie* case of liability' on the part of the operator of the moving vehicle, and imposes upon her or him a duty to explain how the

collision occurred" (*Kosinski v. Sayers*, 294 AD2d 407, 408, quoting *Pincus v. Cohen*, 198 AD2d 405, 406; *see also, Hollis v. Kellog*, 306 AD2d 244; *Ruzycki v. Baker*, 301 AD2d 48; *Abramowicz v. Roberto*, 220 AD2d 374, 375). Defendant Zayas testified at his examination before trial that there was heavy traffic the entire time he was traveling on Merrick Road. "[W]hen a driver approaches another vehicle from the rear, the driver is bound to maintain a reasonably safe rate of speed, to maintain control of his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle (citations omitted)" (*Abramowicz v. Roberto, supra*, at p. 375). An offending driver's explanation that the driver in front of him stopped suddenly for the traffic light does not constitute a non-negligent explanation for his act. Even then, that driver's failure to observe traffic conditions and to maintain a safe stopping distance remains the sole proximate cause of the accident *(Malone v. Morillo*, 6 AD3d 324). Similarly, "[e]vidence that plaintiff's lead vehicle was forced to stop suddenly in heavy traffic does not amount to proof that plaintiff was in any way at fault for the accident (citation omitted) " (*Diller v. City of New York Police Dept.*, 269 AD2d 143, 144; *see also, Ruzycki v. Baker, supra*, at p. 50). "As it can easily be anticipated that cars up ahead will make frequent stops in rush hour traffic, '[d]efendant driver's failure to anticipate and react to the slow and cautious movement of plaintiff's vehicle' is not an adequate, non-negligent explanation for the accident" (*Diller v. City of New York Police Dept., supra*, at p. 50, quoting *Galante v. BMW Financial Services North America*, 223 AD2d 421). And, here, there is no acceptable explanation proffered by defendant for his conduct, nor is there any grounds for an emergency doctrine charge (*see, Abramowicz v. Roberto, supra*, at p. 375-376).

Accordingly, the branch of the plaintiffs' motion for an order granting summary judgment in their favor on the issue of liability is granted.

The matter is presently scheduled on the DCM Trial Calendar for September 14, 2005.

A copy of this order shall be served on counsel for all parties.

Dated: July 6, 2005.

Anthony L. Parga, J.S.C.