

**SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:**

HON. ANTHONY L. PARGA
JUSTICE

-----X
ERIC WODECKI,

PART 8

Plaintiff,

INDEX NO. 3479/10

-against-

MOTION DATE: 2/18/11
SEQUENCE NO. 001

INNA VINOGRADOV and
ALEXANDER NICOLAIDES,

Defendants.

-----X

Notice of Motion, Affs. & Exs.....	<u>1</u>
Affirmation in Opposition.....	<u>2</u>
Affirmation in Reply.....	<u>3</u>

Upon the foregoing papers, plaintiffs' motion for summary judgment on liability grounds, pursuant to CPLR §3212, is granted.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident which occurred on January 22, 2010, on the Grand Central Parkway at or near its intersection with the Van Wyck Expressway, in Queens County, New York.

In support of his motion, Movant submits plaintiff's deposition transcript, defendant Inna Vinogradov's deposition transcript, and photographs of some of the vehicles involved in the accident. During his deposition, plaintiff testified that his vehicle was slowing down on the Grand Central Parkway, due to the vehicles in front of him slowing down, when the defendant's vehicle struck his vehicle in the rear. The plaintiff testified that his vehicle was traveling at approximately 10 mph at the time of the impact. Plaintiff further testified that the defendant's vehicle struck his vehicle with a single impact to its rear, which pushed the plaintiff's vehicle

into the vehicle in front of him. After the accident, plaintiff noticed heavy damage to the front of the defendant's vehicle. In addition, defendant driver Inna Vinogradov told him that she had been moving something on her dashboard or grabbing something inside her vehicle just prior to the accident. Plaintiff also submits photographs of the damage to the defendant's vehicle, identified as such by the defendant at her deposition, which show damage to the front end of the defendant's vehicle.

Defendant Inna Vinogradov testified that she was driving her husband, defendant, Alexander Nicolaides's vehicle with permission at the time of the accident. She testified that she had been traveling at forty miles per hour prior to the accident. She testified that there was moderate traffic on the road and that she did not see the plaintiff's vehicle until she was "hitting it." She also testified that she was traveling "maybe a car, a car and a half" behind the vehicle in front of her prior to the accident.

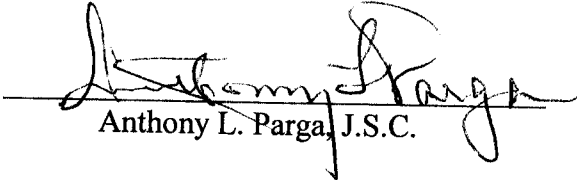
Movant has demonstrated a prima facie showing of entitlement to summary judgment on liability grounds. A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the rearmost vehicle, and imposes a duty on the operator of the rearmost vehicle to come forward with an adequate non-negligent explanation for the accident. (*Carman v. Arthur J. Edwards Mason Contracting Co., Inc.*, 71 A.D.3d 813 (2d Dep't 2010); *Maynard v. Vandyke*, 69 A.D.3d 515 (2d Dep't 2010); *Trombetta v. Cathone*, 59 A.D.3d 526 (2d Dep't 2009); *Ramirez v. Konstanzer*, 61 A.D.3d 837 (2d Dep't 2009); *Garner v. Chevalier Transportation Corp.*, 58 A.D.3d 802 (2d Dep't 2009); *Jumandeo v. Franks*, 56 A.D.3d 614 (2d Dep't 2008); *Johnston v. Spoto*, 47 A.D.3d 888 (2d Dep't 2008); *Harrington v. Kern*, 52 A.D.3d 473 (2d Dep't 2008); *Woods v. Johnson*, 44 A.D.3d 1201 (2d Dep't 2007)). A driver traveling behind another driver has a duty to maintain a safe distance behind the front vehicle, whether it is moving or stopped, to avoid a rear end collision in the event the front vehicle slows down or stops, even suddenly. (N.Y. Veh. & Traf. Law (VTL) §1129(a); *Dicturel v. Dukureh*, 71 A.D. 3d 588 (1st Dep't 2010); *Woodley v. Ramirez*, 25 A.D.3d 451 (1st Dep't 2006); *Arias v. Rosario*, 52 A.D. 3d 551 (2d Dep't 2008); *Jumandeo v. Franks*, 56 A.D.3d 614 (2d Dep't 2008)).

Defendants have not submitted a non-negligent explanation for the happening of the accident and have not raised a triable issue of fact sufficient to defeat plaintiff's prima facie

showing of entitlement to summary judgment on liability grounds. It is well settled that where there are no genuine issues of fact, an action should be summarily decided. (*Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 320 N.E.2d 853, 854, 362 N.Y.S.2d 131, 133 (1974)). Summary judgment is appropriate when, in cases such as this, the Movant establishes that he merely provided the conditions for the accident, and was not the proximate cause of it. (*Siegel v. Boedigheimer*, 294 A.D.2d 560, 562, 743 N.Y.S.2d 137, 139 (2d Dep't 2002)).

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted. The parties are directed to appear in this part at 9:30 A.M. on April 7, 2011 for the previously scheduled certification conference.

Dated: March 21, 2011


Anthony L. Parga, J.S.C.

ENTERED

MAR 25 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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