Index No.: 16396-06

SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:
Hon. **DENISE F. MOLIA,**
Justice

CINDY A. CALLAHAN,

Plaintiff,

- against -

GEORGE W. OWENS,

Defendant.

CASE DISPOSED: NO
MOTION R/D: 2/28/07
SUBMISSION DATE: 3/2/07
MOTION SEQUENCE NO.: 002 MG

ATTORNEY FOR PLAINTIFF
Harold A. Shapiro
325 Middle Country Road
Selden, New York 11784
ATTORNEYS FOR DEFENDANT
Robert P. Tusa
898 Veterans Memorial Highway
Suite 320
Hauppauge, NY 11788

Upon the following papers filed and considered relative to this matter:

Notice of Motion dated January 26, 2007; Affirmation dated December 28, 2006; Affidavit dated January 22, 2007; Exhibits A through C; Affirmation in Opposition dated February 23, 2007; and upon due deliberation; it is

ORDERED, that the motion by plaintiff, pursuant to CPLR 3212, for an Order directing the entry of summary judgment in favor of plaintiff and against the defendant on the issue of liability, is granted.

The instant action was commenced to recover damages for personal injuries allegedly sustained by the plaintiff, in a motor vehicle accident which occurred on November 18, 2004. The plaintiff alleges that on that date, a motor vehicle owned and operated by the defendant, George W. Owens, negligently struck the rear of plaintiff's vehicle while said plaintiff's vehicle was in the process of slowing down in obedience to traffic and the traffic conditions then existing on the Long Island Expressway, Brookhaven, New York.

In opposition to the motion, the defendant has failed to submit an affidavit sufficient to either challenge the facts as set forth by plaintiff, or to create an issue of fact sufficient to deny the relief sought.

The Second Department has consistently held that a rear-end collision with a stopped vehicle imposes a duty on the operator of the moving vehicle to explain how the accident occurred. Leal v. Wolff, 224 A.D.2d 392, 638 N.Y.S.2d 100; Mendiolaza v. Novinski, 268 A.D.2d 462, 703 N.Y.S.2d 49; Young v. City of New York, 113 A.D.2d 833, 493 N.Y.S.2d 585; Starace v. Qonexions, 198 A.D.2d 493, 604 N.Y.S.2d 179. Such "a rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver of the moving vehicle, requiring the operator of that vehicle to come forward with a non-negligent explanation for the accident." Dhamah v. Richmond County Ambulance Service, Inc., 279 A.D.2d 564 at 565, 719 N.Y.S.2d 287. It is well established in this jurisdiction that in a rear-end collision with a stopped or stopping vehicle, a prima facie case of negligence is established against the defendant operator. Filippazzo v. Santiago, 277 A.D.2d 419, 716 N.Y.S.2d 710; Arigro v. Norfolk Contract Carrier, Inc., 275 A.D.2d 384, 712 N.Y.S.2d 599; Power v. Hupart, 260 A.D.2d 458, 688 N.Y.S.2d 194.

Additionally, in a rear-end collision situation, the defendant bears the duty to maintain a safe distance between the defendant's vehicle and plaintiff's vehicle, and the failure to do so will establish a prima facie case of negligence, as a matter of law, against the defendant operator. Lifshits v. Variety Poly Bags, 278 A.D.2d 372, 717 N.Y.S.2d 630; Pena v. Allen, 272 A.D.2d 311, 707 N.Y.S.2d 643; Hernandez v. Burkitt, 271 A.D.2d 648, 706 N.Y.S.2d 456. "[V]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead." Shamah v. Richmond County Ambulance Service, 279 A.D.2d 564, 719 N.Y.S.2d 287, 288.

Here, the plaintiff has met her burden by establishing through pleadings and an affidavit that she was lawfully stopping when the defendant ran into the rear of her vehicle. Daliendo v. Johnson, 147 A.D.2d 312, 543 N.Y.S.2d 987; Ribowsky v. Kashinsky, 234 A.D.2d 353, 651 N.Y.S.2d 886. These allegations remain undisputed by the defendant. There is no opposition which speaks to the issue of liability. By not submitting the sworn statement of the operator of defendant's vehicle or any other evidence in admissible form, the defendant has failed to meet his burden of rebuttal. Hegy v. Coller, 262 A.D.2d 606, 692 N.Y.S.2d 463; see, also, Morissaint v. Raemar Corp., 271 A.D.2d 586, 706 N.Y.S.2d 165.

Where, as here, the defendant fails to offer a non-negligent explanation for the happening of the accident, a finding of fault against the defendant is mandated as a matter of law. Leal v. Wolff, 224 A.D.2d 392, 638 N.Y.S.2d 110. Under the present circumstances, where there is no demonstration that additional discovery will uncover triable issues of fact, it is proper to grant summary judgment in favor of the plaintiffs on the issue of liability. See, Saunders v. Baker, 285 A.D.2d 497, 727 N.Y.S.2d 169; Rodgers v. Yale University, 283 A.D.2d 415, 723 N.Y.S.2d 866; Drug Guild Distributors v. 3-9 Drugs, Inc., 277 A.D.2d 197, 715 N.Y.S.2d 442; Moriello v.

Stormville Airport Antique Show & Flea Market, Inc., 271 A.D.2d 664, 706 N.Y.S.2d 463.

The parties are directed to appear for a Conference to be held at the Courthouse, One Court Street, Room A201, Riverhead, New York on April 18,2007 at 9:30 a.m. for the purpose of entering into an Order setting forth the date by which disclosure on the issue of damages shall be completed.

The foregoing constitutes the Order of this Court.

Dated: March 23, 2007

DENISE F. MOLIA

HON. DENISE F. MOLIA
J.S.C.