SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE TRIAL/IAS PART 20

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MARIA C. GONCALVES and JOAQUIM M. GONCALVES,

Plaintiffs,

-against-

Index No.: 001966/09
Motion Sequence...02
Motion Date... 04/15/10

DOUGLAS F. INGRAM and DOUGLAS J. INGRAM,

Defendants.

_____X

Papers Submitted:
Notice of Motion.....x
Affirmation in Opposition.....x
Reply Affirmation.....x

Upon the foregoing papers, the motion by the Plaintiffs, MARIA C. GONCALVES and JOAQUIM M. GONCALVES, seeking an Order granting them summary judgment, pursuant to CPLR § 3212, is decided as provided herein.

This instant action involves a rear end motor vehicle accident, occurring on June 22, 2006 at approximately 4:00-4:30 p.m., wherein the vehicle driven by the Defendant, DOUGLAS F. INGRAM, struck the rear of the Plaintiff, MARIA C. GONCALVES', vehicle. The collision took place on School Street, at or near its intersection with Railroad Avenue, in Westbury, New York.

The Plaintiff, MARIA C. GONCALVES, alleges that she sustained a serious

injury, pursuant to Insurance Law § 5102 (d), as a result of this accident. The Plaintiff also claims that she sustained economic loss greater than basic economic loss as the term is used in the New York State Insurance Law § 5102 et. seq. Additionally, the Plaintiff, JOAQUIM M. GONCALVES, claims to have suffered loss of services, earnings, consortium and society of his wife, the Plaintiff, MARIA C. GONCALVES.

Just prior to the accident, the Plaintiff, MARIA C. GONCALVES alleges that she came to a "gentle" stop as her vehicle neared the railroad crossing gate. The railroad crossing gate was allegedly coming down and the crossing lights were flashing as the Plaintiff stopped her vehicle. The Plaintiff claims that her vehicle was stopped and her foot was on the brake at the time of impact with the Defendant's vehicle. The Defendant concedes that he saw the Plaintiff's brake lights engaged, the Plaintiff's car at a stop, and the flashing lights of the railroad crossing. However, the Defendant maintains that the Plaintiff contributed to the collision when she came to a sudden stop, short of the railroad crossing.

The Plaintiff is seeking summary judgment, pursuant to CPLR § 3212, stating that the Defendant failed to proffer a non-negligent explanation to rebut the presumption of liability created by the rear end accident.

The Defendant, DOUGLAS F. INGRAM, opposes the Plaintiffs' motion for summary judgment, stating that there are questions of fact to be determined as to whether the Plaintiff was partially at fault for the rear end collision. Specifically, the Defendant alleges that there is a question of fact as to whether the Plaintiff acted reasonably in failing to avoid the accident and whether the Plaintiff caused or contributed to the accident by bringing her

vehicle to a sudden stop prior to impact.

Summary judgment is a drastic remedy and should only be granted when there are no triable issues of fact. *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The goal of summary judgment is to issue find, rather than issue determine. *Hantz v. Fleischman*, 155 A.D.2d 415 (2nd Dept. 1989). In this instant matter, neither party denies that the front of the Defendant's car struck the rear of Plaintiff's car.

Rear end collision cases create a prima facie case of liability with respect to the party who collides with the vehicle in front of it. This prima facie liability imposes a duty of explanation upon the operator of the rear vehicle to rebut the inferences of negligence by providing some non-negligent explanation for the collision. *Crisano v. Comp Tools Corp.*, 295 A.D. 2d 393 (2nd Dept. 2002). A rear end collision with a stopped or stopping vehicle creates a prima facie case of liability with respect to the operator of the rearmost vehicle, imposing a duty of explanation on that operator to excuse the collision either through a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or any other reasonable cause. *Filippazzo v Santiago*, 277 A.D.2d 419 (2nd Dept. 2000).

When a driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle. *Id.*; *see* Vehicle and Traffic Law § 1129 (a). This rule imposes upon drivers the duty to be aware of traffic conditions, including vehicle stoppages. *Johnson v. Phillips*, 261 A.D.2d 269 (1st

Dept. 1999). It has been applied even where the front vehicle stops suddenly. *See Mascitti v. Greene*, 250 A.D.2d 821 (2nd Dept. 1998); *Barba v. Best Sec. Corp.*, 235 A.D.2d 381 (2nd Dept. 1997); *Leal v. Wolff*, 244 A.D. 2d (2nd Dept. 1996). Further, "drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident". *Johnson v. Phillips*, 261 A.D.2d 269 (1st Dept. 1999).

While the Defendant contends that that Plaintiff caused or contributed to the accident by stopping short, under the facts of this case, this is not a non-negligent explanation sufficient to avoid summary judgment on liability. It is well settled that in a rear end collision, the abrupt or sudden stop of the front vehicle, standing alone, is insufficient to rebut the inference of negligence on the part of the rear vehicle. *See Jumandeo v. Franks*, 56 A.D.3d 614 (2nd Dept. 2008); *Russ v. Investech Sec., Inc.*, 6 A.D.3d 602 (2nd Dept. 2004); *Arias v. Rosario*, 52 A.D.3d 551 (2nd Dept. 2008). Here, the Defendant was under a duty to maintain a safe distance between his vehicle and the Plaintiff's vehicle and has failed to rebut the presumption of negligence arising from the rear end collision.

The cases cited by the Defendant in support of his opposition to the Plaintiffs' motion for summary judgment are distinguishable from the facts of this instant case. In *Richards v. Manley Driving Sch.*, 27 A.D.3d 443 (2nd Dept. 2006), summary judgment was denied. The court in *Richards* held that the Defendant driver of the rear vehicle created an issue of fact, under the particular facts of that case, as to whether the front vehicle was partially at fault for allegedly suddenly stopping. In order to ascertain the facts in *Richards*, this Court reviewed the briefs filed on the appeal. According to the Defendants in *Richards*,

an issue of fact remained to be determined as to "whether [the Defendant front vehicle] came to a sudden, screeching stop 50-75 feet from the intersection or whether the [Defendant front vehicle] came to a gradual stop at the intersection". Brief of Defendants-Appellants-Respondents, Jim Smith Chevrolet, Inc. and Joseph Spero at pp. 1-2, *Richards v. Manley Driving Sch.*, 27 A.D.3d 443 (2nd Dept. 2006) (No. 04-10572). Additionally, both the Plaintiff and the Defendant, Joseph Spero, heard the Defendant's vehicle's brakes screech just before impact. Brief of Plaintiff-Respondent at p.

In this instant matter, the Defendant alleges that the Plaintiff stopped short of the railroad crossing. However, the Defendant does not allege that the stop was 50-75 feet before the railroad crossing, as in the *Richards* case. As previously stated, the mere assertion that a car stopped short is insufficient to rebut the presumption of negligence. *See, e.g., Jumandeo v. Franks*, 56 A.D.3d 614 (2nd Dept. 2008), *supra*. Additionally, neither of the parties in this instant matter heard the brakes of the Plaintiff's car screech, indicating a very abrupt stop. Based on these facts, this instant matter is distinguishable from the *Richards* matter.

The Defendant also cites *DeCosmo v. Hulse*, 204 A.D.2d 953 (3rd Dept. 1994) in support of his opposition to the Plaintiffs' motion for summary judgment. In *DeCosmo*, the Plaintiff's vehicle was struck in the rear by the Defendant's vehicle. At the time of the accident, the parties were in "stop and go" traffic. The Defendant alleged that the Plaintiff's vehicle came to a "sudden and complete stop for no apparent reason." *Id.* at 954. Due to the alleged sudden stop in traffic conditions then existing, the court denied summary judgment

for the Plaintiff. *Id.* at 955.

In the instant case, the Plaintiff came to a stop at a railroad crossing for an oncoming train. The flashing lights of the railroad crossing, indicating an approaching train, were seen by both the Plaintiff and the Defendant prior to the collision. Additionally, neither party alleges that they were in "stop and go" traffic, as in *DeCosmo*. Due to the differing traffic conditions and the fact that the Defendant does not allege that the Plaintiff came to a stop "for no apparent reason", *DeCosmo v. Hulse* is distinguishable from the instant matter.

The Defendant has failed to put forth a non-negligent excuse for the rear end collision with the Plaintiff's car. Although the Defendant has alleged that the Plaintiff's car stopped short, this explanation alone is insufficient to rebut the presumption of negligence which arises from a rear end motor vehicle accident. As such, the Defendant has failed to raise a triable issue of fact.

Accordingly, it is hereby

ORDERED, that the Plaintiff's motion for summary judgment, pursuant to CPLR § 3212, on the issue of liability is **GRANTED** and this matter shall proceed to trial on the issue of damages.

All applications not specifically addressed herein are **DENIED**.

This decision constitutes the order of the court.

DATED: Mineola, New York
June 29, 2010

Hon. Randy Sue Marber, J.S.C.