SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : **HON. ROBERT J. MCDONALD**
Justice

- x

JUNG SUK LEE and EUN JEONG CHEON,

Plaintiffs,

- against -

RALPH LIGON and 4 WHEELS LEASING LLC,

Defendants.

- x

Index No.: 4933/2011

Motion Date: 12/21/12

Motion No.: 65

Motion Seq.: 2

The following papers numbered 1 to 15 were read on this motion by plaintiff on the counterclaim, JUNG SUK LEE, for an order pursuant to CPLR 3212(a) granting summary judgment dismissing the counterclaim contained in the defendant's answer:

	Papers Numbered
Notice of Motion-Affidavits-Exhibits	1 - 6
Affirmation in Opposition to Motion	7 - 11
Reply Affirmation	12 - 15

In this negligence action, the plaintiffs, JUNG SUK LEE and EUN JEONG CHEON, seek to recover damages for personal injuries they each allegedly sustained as a result of a motor vehicle accident that occurred on January 26, 2011, between the plaintiff's vehicle and the vehicle owned by defendant 4 WHEELS LEASING LLC and operated by defendant RALPH LIGON. The accident took place at or near the intersection of 77th Street and Northern Boulevard, Queens County, New York. It is alleged that the vehicle operated by the plaintiff JUNG SUK LEE was hit in the rear by the vehicle operated by defendant RALPH LIGON.

The plaintiffs commenced this action by filing a summons and complaint on February 28, 2011. Defendants RALPH LIGON and 4 WHEELS LEASING LLC served a verified answer dated June 8, 2011 containing a counterclaim against plaintiff JUNG SUK LEE. Counsel for plaintiff on the counterclaim served a reply to the counterclaim dated July 15, 2011.

Plaintiff on the counterclaim now moves for an order pursuant to CPLR 3212(a), granting summary judgment dismissing the counterclaim on the ground that any damages sustained by the plaintiffs are due solely to the negligence of the defendant-driver, Ralph Ligon.

In support of the motion, plaintiff on the counterclaim submits an affirmation from counsel, Donald M. Munson, Esq; a copy of the pleadings; and a copy of the transcript of the examination before trial of plaintiff, JUNG SUK LEE.

In his examination before trial taken on May 30, 2012, Jung Suk Lee, age 36, testified that at the time of the accident he was traveling on Northern Boulevard. He was stopped at a red traffic signal at 77th Street for about five seconds when his vehicle was struck in the rear by the vehicle operated by defendant Ligon. He stated that he and his passenger, Eun Jeong Cheon, were seriously injured from the impact. When the police responded to the scene he told the Officer that he was stopped at a red light and was rear-ended.

Plaintiff on the counterclaim's contends that the accident was caused solely by the negligence of defendant Ralph Ligon who failed to safely stop his vehicle prior to rear-ending the plaintiff's vehicle. Counsel contends, therefore, that the plaintiff on the counterclaim is entitled to summary judgment dismissing the defendant's counterclaim on the issue of liability because the defendant driver was solely responsible for causing the accident while the plaintiff driver was free from culpable conduct. Counsel argues that Lee's deposition testimony stating that his vehicle was struck in the rear by defendants' vehicle while stopped at a red traffic signal on Northern Boulevard is sufficient to demonstrate, prima facie, that defendant was negligent as a matter of law (see Young v City of New York, 113 AD2d 833 [2d Dept. 1985][when a driver approaches another vehicle from the rear he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle]).

In opposition to the motion, defendants' counsel, Glen P. Rodriguez, Esq. submits his own affirmation as well as a copy of the deposition testimony of the defendant Ralph Ligon. In his examination, taken on June 25, 2012, Mr. Ligon, age 50, states that at the time of the accident he was employed by 4 Wheels Leasing LLC working as a truck driver. The truck he was driving was owned by his employer and he was driving it with his employer's permission. He states that he was traveling northbound on Northern Boulevard towards Manhattan at a rate of 30 miles per hour. When he was approximately one block away from the intersection, he observed that the light was green. He states that from the time he observed the light until the time he struck the plaintiff's vehicle in the rear the light was still green. He stated that he knew he wasn't going to be able to make the light so he began to apply his brakes before he got to the intersection and slowed down to 15 miles per hour. He stated that immediately prior to the impact his vehicle had slowed down to 3 miles per hour. The defendant testified that he had a conversation with the plaintiff at the scene in which he told the plaintiff that the light was green and he thought that the plaintiff was going to go through the light but the plaintiff slammed on his brake. When the police arrived at the scene he told the Officer that the plaintiff slammed on his brakes. Defendant stated that the front end of the plaintiff's vehicle was halfway in the intersection. He stated that his truck did not skid prior to the accident.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion to show the existence of material issues of fact by providing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

"When the 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" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). It is well established law that a rear-end collision creates a prima facie case of negligence on the part of the driver of the rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Zweeres v Materi, 94 AD3d 1111 [2d Dept. 2012]; Nsiah-Ababio v Hunter, 78 AD3d 672 [2d Dept. 2010]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 [2d Dept. 2007]; Velazquez v Denton Limo, Inc., 7 AD3d 787 [2d Dept. 2004]).

Here, the plaintiff on the counterclaim testified that his vehicle was suddenly struck from the rear by the vehicle operated by defendant Ralph Ligon while he was lawfully stopped for five seconds at a red traffic signal at an intersection on Northern Boulevard. Thus, the plaintiff on the counterclaim satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability (see Volpe v Limoncelli,74 AD3d 795 [2d Dept. 2010]; Smith v Seskin, 49 AD3d 628 [2d Dept. 2008]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendants to raise a triable issue of fact as to whether plaintiff was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk,57 AD3d 478 [2d Dept. 2007]; Jumandeo v Franks, 56 AD3d 614 [2d Dept. 2008]; Arias v Rosario 52 AD3d 551 [2d Dept. 2008]).

Counsel for Mr. Ligon, Glen P. Rodriguez, Esq. argues that although the plaintiff may have made a prima facie case, the defendant in his deposition testimony has offered a non-negligent explanation for the accident. According to defendant's testimony the plaintiff stopped his vehicle inside the intersection at a time when the traffic light was still green. Thus, counsel argues that because the defendant offered a conflicting version of how the accident occurred there is a question of fact for the jury's determination.

This Court finds that the defendant failed to submit evidence sufficient to rebut the presumption of negligence and raise a triable issue of fact. Here, the defendant testified that he believed that the plaintiff entered the intersection when the light was still green and then abruptly stopped short in the intersection when the light turned red. However, defendant also testified that prior to the time he reached the intersection he was attempting to slow his vehicle down because in his words, "I knew I couldn't make the light so I was applying the brakes before coming to the light." Therefore, because he was anticipating that the traffic signal was about to change to red, he applied his brakes prior to the plaintiff stopping his vehicle. The defendant's testimony indicates that he was aware that the light was going to change to red and that he was attempting to come to a stop at the intersection. Thus, even if the plaintiff's vehicle came to an abrupt stop at the traffic light, defendant's truck was unable to safely stop his truck behind the plaintiff's vehicle indicating that he was traveling at an excessive rate of speed and following too closely (see Zdenek v. Safety Consultants, Inc., 63 AD3d 918 [2d Dept. 2009].

In addition, because the defendant was attempting to stop his vehicle at the light he cannot claim that the stop by plaintiff's vehicle was unanticipated (see Harrington v. Kern, 52 AD3d 473 [2d Dept. 2008]).

Although defendant maintains that the accident was the result of plaintiff braking or stopping suddenly at the traffic signal this does not explain his failure to maintain a safe distance from the vehicle in front of him or to safely stop prior to rear-ending the plaintiff's vehicle [see Dicturel v Dukureh,71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal,69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan,68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc.,63 AD3d 918 [2d Dept. 2009]).

Under the circumstances presented, defendant's assertion that plaintiffs' vehicle made an unexpected, sudden stop at a green traffic light does not provide a non-negligent explanation for the rear-end collision. "Vehicle stops which are foreseeable under the prevailing traffic conditions 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 vehicle and the vehicle ahead" (see Jackson v Nolasco, 2010 NY Slip Op 31814U [Sup.Ct. Suffolk Cty. 2010]; Vehicle & Traffic Law § 1129; Taing v Drewery, 954 NYS2d 175 [2d Dept. 2012}; Shamah v Richmond County Ambulance Serv., Inc., 279 AD2d 564 [2d Dept. 2001]).

Accordingly, as the evidence in the record demonstrates that the defendant RALPH LIGON and 4 WHEELS LEASING LLC failed to provide a non-negligent explanation for the collision, and as no triable issues of fact have been put forth as to whether plaintiff may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the plaintiff on the counterclaim's motion is granted, and the plaintiff on the counterclaim, Jung Suk Lee, shall have summary judgment on the issue of liability dismissing the counterclaim asserted by the defendants RALPH LIGON and 4 WHEELS LEASING LLC PRODUCTIONS, LLC.

Dated: January 16, 2013
Long Island City, N.Y.

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ROBERT J. MCDONALD
J.S.C.