

**Young v City of N.Y. (Dept. of Sanitation)**

2014 NY Slip Op 30229(U)

January 24, 2014

Sup Ct, New York County

Docket Number: 100493/13

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

PRESENT: \_\_\_\_\_  
Justice

PART 5

Index Number : 100493/2013  
YOUNG, NUBIA R.

INDEX NO. \_\_\_\_\_

vs  
CITY OF NEW YORK

MOTION DATE \_\_\_\_\_

Sequence Number : 002

CAL: # 89

MOTION SEQ. NO. \_\_\_\_\_

PARTIAL SUMMARY JUDGMENT

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):


DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER

**FILED**

JAN 23 2014

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1-24-14

  
\_\_\_\_\_, J.S.C.

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 5

-----X

NUBIA R. YOUNG,

Plaintiff,

-against-

DECISION/ORDER  
Index No. 100493/13  
Seq. No. 002

THE CITY OF NEW YORK (Department of Sanitation) and ROBERT R. TARENC,

Defendants.

-----X  
KATHRYN E. FREED, J.S.C.:

**FILED**

JAN 28 2014

**NEW YORK  
COUNTY CLERK'S OFFICE**

RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

| PAPERS  | NUMBERED       |
|---|----------------|
| NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....    | 1(Exs. A-E), 2 |
| ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED..... | .....          |
| ANSWERING AFFIDAVITS.....                       | .....3.....    |
| REPLY AFFIRMATION .....                         | .....4.....    |
| OTHER...(Memo of Law) .....                     | .....5.....    |

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Plaintiff Nubia R. Young moves for an Order granting her partial summary judgment against defendants The City of New York (Department of Sanitation) (“the City” and “the DOS”, respectively) and Robert R. Tarenc pursuant to CPLR 3212. Defendants oppose the motion.

After a review of the papers presented, all relevant statutes and case law, this Court **grants** the motion.

Factual and Procedural Background:

This case arises from an automobile accident on January 18, 2012 in which plaintiff was injured when the vehicle she owned and operated was rear-ended by a dump truck owned by the City and operated by Tarenc, an employee of the City's DOS. According to plaintiff, she was traveling on East 83<sup>rd</sup> Street in Manhattan when she stopped at a red light at the intersection of First Avenue. Her vehicle was stopped for five seconds before she was injured when the DOS truck struck her vehicle in the rear and pushed it into a taxi which was in front of her car. Tarenc does not dispute that he struck plaintiff's vehicle from behind. However, he maintains that plaintiff's vehicle, as well as the taxi in front of plaintiff's vehicle, braked abruptly, rendering him unable to avoid striking plaintiff's car, despite his efforts to swerve around those vehicles. Neither the City nor Tarenc set forth the distance between the DOS truck and plaintiff's vehicle at the time Tarenc claims that plaintiff braked abruptly.

The Parties' Positions:

Plaintiff asserts that she is entitled to summary judgment as to liability pursuant to Vehicle and Traffic Law § 1129(a) since defendants' vehicle struck her car from behind and defendants have failed to proffer a non-negligent explanation for the occurrence.

Defendants assert that plaintiff is not entitled to summary judgment as to liability since questions of fact exist regarding how the incident occurred. Specifically, they assert that, while plaintiff claims she was stopped for five seconds before being struck by the truck, Tarenc maintains that the taxi and plaintiff's vehicle stopped abruptly, causing him to collide with plaintiff's vehicle and pushing it into the taxi. Defendants further assert that summary judgment must be denied as

premature since discovery remains outstanding.

In her reply affirmation, plaintiff asserts that summary judgment must be granted to her as to liability since Tarenc failed to maintain a safe distance between the DOS truck and her vehicle.

Conclusions of Law:

“The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law.” *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 (1<sup>st</sup> Dept. 2007), citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557 (1989).

It is well settled that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the driver of the rear vehicle, and the injured occupant of the front vehicle is entitled to summary judgment on liability unless the driver of the rear vehicle provides a non-negligent explanation for the collision. *See Williams v Kadri*, \_\_\_ AD3d \_\_\_, 976 NYS2d 460 (1<sup>st</sup> Dept 2013); *Cabrera v Rodriguez*, 72 A.D.3d 553 (1<sup>st</sup> Dept. 2010); *Dicturel v Dukureh*, 71 AD3d 558 (1<sup>st</sup> Dept 2010).

A mere conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle in front caused the accident is deemed insufficient on its own, to provide a non-negligent explanation. *See Cabrera v Rodriguez, supra* at 554. . Indeed, the issue of comparative fault is considered appropriate for a jury’s determination only where there exists a triable issue of fact as to whether the frontmost driver also operated his vehicle in a negligent manner. *See Gutierrez v*

*Trillium USA, LLC*, 111 AD3d 669 (2d Dept. 2013). “[A] driver is expected to maintain enough distance between himself and cars ahead of him so as to avoid collisions with stopped vehicles, taking into account the weather and road conditions (*see LaMasa v Bachman*, 56 AD3d 340 (1<sup>st</sup> Dept 2008).” *Williams v Kadri, supra*.

In the case at bar, it is undisputed that Tarenc drove his vehicle into the rear of the car driven by plaintiff. While plaintiff claims that she was stopped at the light for five seconds before the impact, Tarenc claims that plaintiff’s vehicle, and the taxi in front of it, stopped short in front of him. Thus, it is undisputed that the vehicles in front of Tarenc’s were stopped at the time of the collision (*see Cabrera v Rodriguez, supra*, at 554) and, since Tarenc failed to submit evidence that he maintained a safe distance between his and plaintiff’s vehicles, his affidavit is “insufficient to rebut the presumption that no negligence on plaintiff’s part contributed to the accident.” *Dicturel v Dukureh, supra* at 559, quoting *Soto-Marroquin v Mellet*, 63 AD3d 449, 450 (1<sup>st</sup> Dept 2009); Vehicle and Traffic Law § 1129(a).

In light of the foregoing, plaintiff has established her prima facie entitlement to summary judgment on liability and defendants have failed to rebut the inference that they were negligent by providing a non-negligent explanation for the collision. *See Corrigan v Porter Cab Corp.*, 101 AD3d 471, 472 (1<sup>st</sup> Dept 2012).<sup>1</sup>

Defendants’ claim that plaintiff’s motion should be denied due to outstanding discovery is

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<sup>1</sup>The Court notes that plaintiff claims that the incident occurred on East 83<sup>rd</sup> Street at its intersection with First Avenue, whereas Tarenc maintains that it occurred on First Avenue between 82<sup>nd</sup> and 83<sup>rd</sup> Streets. Although this conflicting testimony may arguably create an issue of fact, such an issue is *not material* here, where Tarenc admits that his truck struck plaintiff’s vehicle from behind. *See generally Jacobs v Schleicher*, 124 AD2d 785 (2d Dept 1986). Further, defendants do not argue that an issue of fact was created by conflicting testimony regarding the location of the incident.

unavailing. “A grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence.” *Lee v Ana Devel. Corp.*, 83 AD3d 545, 546 (1<sup>st</sup> Dept 2011), *quoting Bailey v New York City Tr. Auth.*, 270 AD2d 156, 157 (1<sup>st</sup> Dept 2000). Here, defendants made no such showing. They merely assert that plaintiff’s motion must be denied because “discovery is still proceeding in this matter”, without citing to any specific evidence they need which may impact on the decision of this motion. Thus, plaintiff’s motion was not premature “since defendants failed to demonstrate that facts essential to justify opposition to the motion may exist but could not be stated” *Griffin v Pennoyer*, 49 AD3d 341 (1<sup>st</sup> Dept 2008), *citing* CPLR 3212(f).

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff Nubia R. Young is awarded partial summary judgment against defendants The City of New York (Department of Sanitation) and Robert R. Tarenc as to liability, and an assessment of damages is directed; and it is further,

ORDERED that a copy of this order with notice of entry be served upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment herein above directed, provided that nothing herein shall authorize the filing of a note of issue prior to the completion of discovery on damages; and it is further,

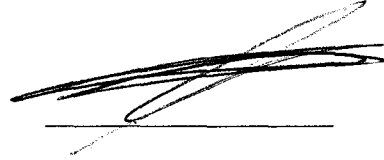
ORDERED that the parties are directed to appear for a settlement conference in this matter on March 11, 2014 at 80 Centre Street, Room 280, at 2:30 p.m.; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: January 24, 2014

ENTER:

JAN 24 2014



Hon. Kathryn E. Freed  
J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

**FILED**  
JAN 28 2014  
NEW YORK  
COUNTY CLERK'S OFFICE