

NEW YORK SUPREME COURT----------COUNTY OF BRONX

PART IA - 5

RYAN BRODERICK,

Plaintiff,

-against-

FU YAN PAN, DE YIN XU, SHAUN POWELL, HAILEY VILENCIA and PIERRE ALEXANDER LYNN,

Defendants.

INDEX NUMBER: **306522/2011**

Present:
HON. **ALISON Y. TUITT**
Justice

The following papers numbered 1-5,

Read on this Defendants Shaun Powell and Pierre Alexander Lynn's Motion and Plaintiff's Cross-Motion for Summary Judgment

On Calendar of **10/16/13**

Notice of Motion/Cross-Motion-Exhibits and Affirmations 1, 2

Affirmation in Opposition 3

Reply Affirmations 4, 5

Upon the foregoing papers, defendants Shaun Powell (hereinafter "Powell") and Pierre Alexander Lynn's (hereinafter "Lynn") motion for summary judgment and plaintiff's cross-motion for partial summary judgment on the issue of liability are consolidated for purposes of this decision. For the reasons set forth herein, the motion and cross-motion are granted.

The within action arises from a motor vehicle accident on December 1, 2009 at approximately 2:00 p.m., on the westbound Cross Bronx Expressway Service Road, a one lane road, at the intersection of Rosedale Avenue, County of Bronx and State of New York. At the time of the accident, plaintiff was a passenger in the vehicle owned by defendant Lynn and operated by defendant Powell. Powell contends that

while his vehicle was fully stopped, it was struck in the rear by the vehicle owned by defendant Fun Yan Pan and operated by defendant De Yin Xu (hereinafter "Xu").

Plaintiff testified at his deposition that he was a passenger in defendant Powell's vehicle on the date of the accident. Plaintiff claims that Powell's vehicle was struck from behind with a heavy impact. Defendant Xu testified at his deposition that immediately prior to the accident, he was driving on a one lane road. When he first entered that roadway, there were no vehicles in front of his car, but a car cut in front of his vehicle so he stopped his vehicle to allow the other vehicle to cut in front. At that time, they were moving very slow, about five to ten miles per hour because there was traffic in the area. Defendant Xu further testified that the car in front of him stopped and he stopped too, but he did not notice that his vehicle had made contact with the vehicle in front of his car. Defendant Xu denies feeling any impact between the vehicles and stated that there was no damage to either of the vehicles.

The court's function on this motion for summary judgment is issue finding rather than issue determination. Sillman v. Twentieth Century Fox Film Corp., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. Stone v. Goodson, 8 N.Y.2d 8, (1960); Sillman v. Twentieth Century Fox Film Corp., *supra*.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. 300 East 34th Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1st Dept. 1997).

It is well established that a rear-end collision with a stationary vehicle creates a prima facie case

of negligence on the part of the operator of offending vehicle and imposes a duty upon that operator to proffer a non-negligent explanation for his failure to maintain a safe distance between cars. Agramonte v. City of New York, 732 N.Y.S.2d 414 (1st Dept. 2001); Mitchell v. Gonzalez, 703 N.Y.S.2d 124 (1st Dept. 2000). "Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages". Johnson v. Phillips, 690 N.Y.S.2d 545 (1st Dept. 1999).

Here, defendants Powell and Lynn's motion for summary judgment must be granted as defendant Xu fails to provide a non-negligent explanation for the happening of the accident. Defendant does not explain why he failed maintain a safe distance between his vehicle and plaintiff's vehicle. Drivers are charged with a responsibility to maintain a safe distance between vehicles and to be prepared for such vehicle stoppages. Vehicle and Traffic Law §1129(a). Furthermore, it is not a sufficient defense to claim that the vehicle in front stopped short. See, Mitchell, 703 N.Y.S.2d at 124. See also, Figueroa v. Luna, 721 N.Y.S.2d 635 (1st Dept. 2001); Moustapha v. Riteway International Removal, Inc., 724 N.Y.S.2d 52 (1st Dept. 2001). In the instant matter, notwithstanding defendant's contention that Powell's vehicle cut in front of his and that there was no impact between the vehicles, Xu testified that Powell's vehicle had stopped prior to the accident and he saw Powell's vehicle stopped so he brought his vehicle to a stop.

Moreover, plaintiff's cross-motion for partial summary judgment on the issue of liability must also be granted. Plaintiff was a passenger in Powell's vehicle and therefore is not guilty of any negligence. See, Garcia v. Tri-County Ambulette Service , 723 N.Y.S.2d 163 (1st Dept. 2001) ("Plaintiff, as an innocent rear-seat passenger... who cannot possibly be found at fault... is entitled to partial summary judgment... Since it is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles, (see, Johnson v Phillips, 690 N.Y.S.2d 545 (1st Dept. 1999)), plaintiff should have been granted summary judgment on the issue of liability.").

Accordingly, defendants Powell and Lynn's motion for summary judgment is granted and the complaint is dismissed against them and plaintiff's cross-motion for summary judgment on the issue of liability

is granted.

This constitutes the decision and order of this Court.

Dated: 1/6/2014

A. Y. Tuitt

Hon. Alison Y. Tuitt