

<b>Min Chul Song v Tapken</b>
2020 NY Slip Op 33947(U)
September 30, 2020
Supreme Court, Queens County
Docket Number: 712788/2019
Judge: Leslie J. Purificacion
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

**FILED**

PRESENT: Hon. Leslie J. Purificacion, JSC

Part 39

**10/2/2020**

**11:29 AM**

MIN CHUL SONG,

Index No: 712788/2019

**COUNTY CLERK  
QUEENS COUNTY**

Plaintiff

**DECISION/ORDER**

-against-

NATALIE TAPKEN, DANIEL WEINREICH  
and VIRGINIA BLANCO

Motion Seq: 1 & 2

Defendants.

The following papers numbered 1 to 13 read on this motion (Seq # 1) by defendants Natalie Tapken and Daniel Weinreich to dismiss the complaint for plaintiff's failure to comply with discovery demands, and separate motion (Seq. # 2) by co-defendant Virginia Blanco for summary judgment pursuant to CPLR § 3212 dismissing the complaint and cross claims as to said defendant.

PAPERS  
NUMBERED

Seq. #1	
N.M., Aff., Exhibits and Service.....	1-4
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Answering Aff., Exhibits and Service.....	9-11
Reply and Service.....	12-13

Upon the foregoing papers it is ordered that the motions are consolidated for determination as follows:

This action arises out of a three car motor vehicle accident that occurred on May 24, 2019, on the HOV lane of the Long Island Expressway at or near Exit 48, Oyster Bay, Nassau County. Plaintiff Song was the driver of the middle vehicle, defendant Tapken the driver of the last vehicle (owned by defendant Weinreich), and defendant Blanco operated the lead vehicle.

Motion Seq. #1

Defendants Natalie Tapken and Daniel Weinreich move to strike the plaintiff's pleadings for plaintiff's failure to provide HIPPA authorizations for medical records with respect to two prior accidents of January 19, 2018 and December 18, 2014. Plaintiff has not opposed the motion.

Accordingly, motion Seq. # 1 is granted to the extent that plaintiff is directed, within 30 days of service of a copy of this order with notice of entry, to provide movants with HIPPA authorizations for medical records with respect to the aforementioned automobile accidents.

Motion Seq. # 2

In support of the motion for summary judgment on the issue of liability, defendant Virginia Blanco submits, inter alia, an affidavit wherein she avers that her vehicle was stopped when she felt an impact to the rear of her vehicle. She states traffic was heavy and that she did not have any mechanical difficulties with her vehicle. Plaintiff does not submit any opposition to the motion. Co-defendants Tapken and Weinreich oppose the motion.

The proponent of 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, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 N.Y.2d 557).

The court finds that co-defendant Blanco has tendered sufficient evidentiary proof to establish her entitlement to summary judgment. The burden thus shifts to co-

defendants Tapken and Weinreich to show the existence of material issues of fact by producing evidentiary proof in admissible form.

In opposition to the motion, co-defendants Natalie Tapken and Daniel Weinreich submit, inter alia, an affidavit by Natalie Tapken wherein she avers that she was traveling in medium traffic in the HOV lane and observed plaintiff merge into the lane from a point where merging was not permitted. She further states that soon after the merge she observed plaintiff's vehicle, as well as the Blanco vehicle, suddenly stop. She states she was traveling at approximately 35-40 mph and at the time of the accident she was approximately 3 to 4 car lengths behind plaintiff's vehicle. She states that although she slammed on her brakes, she was unable to stop and struck the rear of plaintiff's vehicle.

A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under prevailing conditions to avoid colliding with the other vehicle (see Plummer v. Nourddine, 82 A.D.3d 1069; Gubala v Gee, 302 A.D.2d 911 ). As such, it is well-settled that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the offending vehicle's driver and imposes a duty on that operator to provide a non-negligent explanation for the collision (Katz v Masada II Car & Limo Service, Inc., 43 A.D.3d 876; Mead v Marino, 205 A.D.2d 669). A nonnegligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause (see Binkowitz v. Kolb, 135 A.D.3d 884, 885, 24 N.Y.S.3d 186; Etingof v. Metropolitan Laundry Mach. Sales, Inc.,

134 A.D.3d 667, 20 N.Y.S.3d 589; D'Agostino v. YRC, Inc., 120 A.D.3d 1291, 1292, 992 N.Y.S.2d 358; Sayyed v. Murray, 109 A.D.3d 464, 970 N.Y.S.2d 279).

Co-defendant Tapken fails to establish a nonnegligent explanation for her failure to avoid the accident. "While a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, 'vehicle 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' " (Theo v. Vasquez, 136 A.D.3d 795, 796, quoting Brothers v. Bartling, 130 A.D.3d 554, 556).

In view of the foregoing, co-defendants Tapken and Weinreich have failed to raise a triable issue of fact. Tapken does not claim that Song cut-off her vehicle when Song allegedly improperly merged onto the HOV lane or that movant co-defendant Blanco suddenly stopped her vehicle for no reason. She further states that she was able to observe both plaintiff's and the Song vehicles come to a stop yet was unable to successful stop her vehicle.

The court also finds that Tapken and Weinreich have failed to demonstrate that discovery would lead to facts essential to justify opposition to the motion that are exclusively within plaintiff's or co-defendant's knowledge and control (see Rodriguez v Farrell, 115 AD3d 929).

Accordingly, motion Seq. #2 is granted and the complaint and cross claims against defendant Virginia Blanco are hereby dismissed.

This is the decision and order of the court.

Date:

9/30/20

FILED

10/2/2020  
11:29 AM

Hon. Leslie J. Purificacion, J.S.C.

COUNTY CLERK  
QUEENS COUNTY