SHORT FORM ORDER

INDEX No. 17-606512
CAL. No. 19-01029MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

PRESENT:

Hon. C. RANDALL HINRICHS
Justice of the Supreme Court

MOTION DATE 10-29-19 (001 & 002)
ADJ. DATE 12-17-19
Mot. Seq. # 001 - MG
Mot. Seq. # 002 - MG

CONNIE BUFE,

Plaintiff,

- against -

JANE REILLY and RENEE GRILLO,

Defendants.

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Upon the following papers read on these motions for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers by plaintiff dated September 25, 2019 ; Notice of Motion/Order to Show Cause and supporting papers by defendant Jane Reilly date September 25, 2019 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers by defendant Renee Grillo dated November 26, 2019 ; Replying Affidavits and supporting papers by plaintiff dated November 27, 2019 ; Other ___; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that the motion (001) by the plaintiff and the motion (002) by defendant Reilly are consolidated for the purposes of this determination; and it is further

ORDERED that the motion (001) by the plaintiff for an order pursuant to CPLR 3212, granting partial summary judgment on the issue of liability against defendant Grillo, is granted; and it is further

ORDERED that the motion (002) by defendant Reilly for an order pursuant to CPLR 3212, granting summary judgment and dismissing plaintiff's complaint and all cross-claims against defendant Reilly, is granted.

This is an action to recover damages for injuries allegedly sustained by plaintiff Connie Bufe as a result of a multi-vehicle accident, which occurred on July 14, 2016, on Nesconset Highway, at or near its intersection with Hallock Road, in the Town of Smithtown, State of New York. The accident allegedly occurred when a vehicle owned by defendant Renee Grillo and operated by Robert Grillo struck a vehicle owned and operated by defendant Jane Reilly in the rear, which was then propelled forward into plaintiff's vehicle.

Plaintiff now moves for partial summary judgment in her favor on the issue of defendant Grillo's negligence and for an order striking defendants' affirmative defense of comparative negligence. She contends that her vehicle was stopped for traffic when it was struck in the rear by Reilly's vehicle. She also contends that Reilly's vehicle was struck in the rear by Grillo's vehicle at the time of the accident. In support of her motion, plaintiff submits, among other things, her affidavit. In opposition to plaintiff's motion, Grillo argues that triable issues of fact exist as to which party was at fault in the happening of the collision.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 87 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Once the movant demonstrates a prima facie entitlement to judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see* ***Vega v Restani Constr. Corp.***, 18 NY3d 499, 942 NYS2d 13 [2012]; ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, 49 NY2d 557; 427 NYS2d 595 [1980]; *see also* CPLR 3212 [b]).

The presumption of negligence in rear-end cases arises from the duty of the driver of the following vehicle to keep a safe distance and not collide with the traffic ahead (*see* Vehicle and Traffic Law § 1129 [a]; ***Witonsky v New York City Tr. Auth.***, 145 AD3d 938, 43 NYS3d 505 [2d Dept 2016]; ***Service v McCoy***, 131 AD3d 1038, 16 NYS2d 283 [2d Dept 2015]). 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 imposes a duty on that driver to proffer a non-negligent explanation for the collision (***Conroy v New York City Tr. Auth.***, 167 AD3d 977, 91 NYS3d 183 [2d Dept 2018]; ***Tsyganash v Auto Mall Fleet Mgt., Inc.***, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; ***Binkowitz v Kolb***, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]). If the driver of the offending vehicle cannot come forward with evidence to rebut the inference of negligence, the driver of the stopped or stopping vehicle is entitled to summary judgment on the issue of liability (***Tsyganash v Auto Mall Fleet Mgt., Inc.***, *supra*; ***Cortes v Whelan***, 83 AD3d 763, 922 NYS2d 419 [2d Dept 2011]).

Plaintiff made a prima facie case of entitlement to summary judgment in her favor on the issue of liability by demonstrating that defendant Grillo's negligence was the sole legal and proximate cause of the accident (*see* ***Lopez v Dobbins***, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; ***Niyazov v Hunter EMS, Inc.***, 154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]). She stated that her vehicle was completely

stopped when it was struck from behind by defendant Reilly's vehicle which had been struck from behind by defendant Grillo's vehicle. Plaintiff's affidavit also established, prima facie, that she was not comparatively negligent (*see* ***McLaughlin v Lunn***, 137 AD3d 757, 26 NYS3d 338 [2d Dept 2016]).

The burden now shifts to defendant Grillo to raise a triable issue of fact as to whether there was a non-negligent explanation for the accident (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Cortes v Whelan***, *supra*). Defendant has failed to raise a triable issue of fact. Accordingly, plaintiff's motion is granted.

Turning to motion sequence 002, a defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (***Victor v Daley***, 150 AD3d 1307, 56 NYS3d 223 [2d Dept 2017]; ***Faust v Gerde***, 150 AD3d 1204, 52 NYS3d 1204 [2d Dept 2017]; ***Estate of Cook v Gomez***, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]). While there can be more than one proximate cause of an accident and it is generally for the trier of fact to determine, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts (***Victor v Daley***, *supra*; ***Faust v Gerde***, *supra*; ***Estate of Cook v Gomez***, *supra*).

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 (*see* Vehicle and Traffic Law § 1129 [a]; ***Melendez v McCrowell***, 139 AD3d 1018, 32 NYS3d 604 [2d Dept 2016]; ***Service v McCoy***, 131 AD3d 1038, 16 NYS2d 283 [2d Dept 2015]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]). 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 imposes a duty on that driver to proffer a non-negligent explanation for the collision (***Conroy v New York City Tr. Auth.***, 167 AD3d 977, 91 NYS3d 183 [2d Dept 2018]; ***Tsyganash v Auto Mall Fleet Mgt., Inc.***, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; ***Binkowitz v Kolb***, 135 AD3d 884, 24 NYS3d 186 [2d Dept 2016]). "Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a non-negligent explanation" (***Woodridge-Solano v Dick***, 143 AD3d 698, 699, 39 NYS3d 41 [2d Dept 2016], quoting ***Ortiz v Haidar***, 68 AD3d 953, 954, 892 NYS2d 122 [2d Dept 2009]. In addition, responsibility for a chain-reaction motor vehicle accident presumptively rests with the rearmost driver (*see* ***De La Cruz v Ock Wee Leong***, 16 AD3d 199, 791 NYS2d 102 [1st Dept 2005]; ***Mustafaj v Driscoll***, 5 AD3d 138, 773 NYS2d 26 [1st Dept 2004]).

Reilly established her prima facie entitlement to summary judgment dismissing the complaint against her (*see* ***Rungoo v Leary***, 110 AD3d 781, 972 NYS2d 672 [2d Dept 2013]; ***Moore v Singh***, 108 AD3d 602, 969 NYS2d 146 [2d Dept 2013]). By her affidavit, she stated that her vehicle was fully stopped in traffic before it was hit in the rear, thereby pushing her vehicle into the rear of the plaintiff's vehicle.

The burden now shifts to the non-moving parties to raise a triable issue of fact as to whether Reilly was negligent in the operation of her vehicle. In this case, Grillo and Bufe failed to raise any triable issues of fact regarding defendant Reilly's negligence.

Accordingly, the motion by defendant Reilly for summary judgment dismissing the complaint and all cross-claims against her is granted.

Dated: May 7, 2020

C. Randall Hinrichs

C. RANDALL HINRICHS, J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION