SHORT FORM ORDER

INDEX No. 605822/2019
CAL. No. 202000846MV

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - SUFFOLK COUNTY

PRESENT:

Hon. GEORGE M. NOLAN
Justice of the Supreme Court

MOTION DATE 1/21/2021
ADJ. DATE
Mot. Seq. # 001 MG
Mot. Seq. # 002 MotD

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EDWARD J. BILSON,

Plaintiff,

- against -

KATHERINE M. GILMORE, JANINA M. RIDGE and NEIL T. RIDGE,

Defendants.

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DELL & DEAN, PLLC
Attorney for Plaintiff
1225 Franklin Avenue, Suite 450
Garden City, New York 11530

GENTILE & TAMBASCO
Attorney for Defendant Gilmore
115 Broadhollow Road, Suite 300
Melville, New York 11747

LEWIS JOHS AVALLONE & AVILES, LLP
Attorney for Defendants Ridge
1 CA Plaza, Suite 225
Islandia, New York 11749

Upon the following papers read on these motion for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers filed by defendant Katherine M. Gilmore, on November 10, 2020 ; Notice of Cross Motion and supporting papers filed by plaintiff, on January 10, 2021 ; Answering Affidavits and supporting papers filed by defendant Katherine M. Gilmore, on January 20, 2021 ; Replying Affidavits and supporting papers filed by defendant Katherine M. Gilmore, on January 20, 2021; filed by plaintiff, on January 20, 202 ; Other _; it is

ORDERED that the motion (#001) by Katherine M. Gilmore and the motion (#002) by plaintiff are consolidated for the purposes of this determination; and it is further

ORDERED that the motion by defendant Katherine M. Gilmore for summary judgment dismissing the complaint and cross claims against her is granted; and it is further

ORDERED that the motion, improperly denominated as a cross motion, by plaintiff for summary judgment in his favor on the issue of defendants' liability is granted in part, and denied in part.

This is an action to recover damages for injuries allegedly sustained by plaintiff Edward J. Bilson as the result of a motor vehicle accident, which occurred on February 21, 2017, on the westbound Long Island Expressway, between exits 55 and 56, in Islandia, New York. The accident allegedly occurred when a vehicle, which was owned and operated by plaintiff, was involved in a three-vehicle collision with a vehicle owned and operated by defendant Katherine M. Gilmore, and a vehicle owned by defendant Janina M. Ridge and operated by defendant Neil T. Ridge. Plaintiff operated the lead vehicle, Gilmore operated the middle vehicle, and Ridge operated the rear vehicle. It is alleged that plaintiff brought his vehicle to a stop in heavy traffic, that Gilmore brought her vehicle to a stop behind plaintiff, and that Ridge's vehicle struck Gilmore's vehicle in the rear, which propelled it into plaintiff's vehicle.

Gilmore now moves for summary judgment dismissing the complaint and the cross claims against her, arguing that because her vehicle was stopped completely when it was struck in the rear by Ridge's vehicle, which propelled it into Bilson's vehicle, she was not at fault in the happening of the accident. In support of her motion, Gilmore submits, inter alia, the transcripts of the depositions of the parties. Plaintiff opposes the motion, and moves for partial summary judgment in his favor on the issue of defendants' liability, arguing that defendants' negligence was the sole proximate cause of the accident. Plaintiff alleges that Gilmore and Ridge violated, inter alia, Vehicle and Traffic Law § 1129 (a) by following too closely. Plaintiff submits his summons and complaint, and the answers of Gilmore and Ridge.

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 (*see* ***Estate of Cook v Gomez***, 138 AD3d 675, 30 NYS3d 148 [2d Dept 2016]; ***Boulos v Lerner-Harrington***, 124 AD3d 709, 709, 2 NYS3d 526 [2d Dept 2015]; ***Rungoo v Leary***, 110 AD3d 781, 782, 972 NYS2d 672 [2d Dept 2013]). 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 (*see* ***Estate of Cook v Gomez***, *supra*; ***Jones v Vialva-Duke***, 106 AD3d 1052, 966 NYS2d 187 [2d Dept 2013]; ***Kalland v Hungry Harbor Assoc., LLC***, 84 AD3d 889, 922 NYS2d 550 [2d Dept 2011]).

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]; ***Singh v Avis Rent A Car Sys., Inc.***, 119 AD3d 768, 989 NYS2d 302 [2d Dept 2014]; ***Martinez v Martinez***, 93 AD3d 767, 941 NYS2d 189 [2d Dept 2012]). Accordingly, a rear-end collision establishes a prime facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see* ***Strickland v Tirino***, 99 AD3d 888, 952 NYS2d 599 [2d Dept 2012]; ***Martinez v Martinez***, *supra*; ***Giangrasso v Callahan***, 87 AD3d 521, 928 NYS2d 68 [2d Dept 2011]). Evidence that a vehicle was struck in the rear and propelled into the vehicle in front of it may provide a sufficient non-negligent explanation (*see* ***Hartfield v Seenarraine***, 138 AD3d 1060, 30 NYS3d 316 [2d Dept 2016]; ***Kuris v El Sol Contr. & Constr. Corp.***, 116 AD3d 675, 983 NYS2d 580 [2d Dept 2014]; ***Strickland v Tirino***, *supra*). In chain-reaction accidents, the operator of a vehicle which is stopped or coming to a stop and is propelled into

the vehicle in front of it, as a result of being struck from behind, is not negligent inasmuch as the operator's actions cannot be said to be the proximate cause of the injuries resulting from the collision (*see* ***Chuk Hwa Shin v Correale***, 142 AD3d 518, 36 NYS3d 213 [2d Dept 2016]; ***Niosi v Jones***, 133 AD3d 578, 19 NYS3d 550 [2d Dept 2015]; ***Vargas v Muhammad Akbar***, 123 AD3d 1016, 999 NYS2d 163 [2d Dept 2014]).

Gilmore has established, prima facie, entitlement to summary judgment dismissing the complaint and the cross claims as asserted against her, as she has established that she was completely stopped in traffic on the Long Island Expressway when she was struck from behind by Ridge (*see* ***Estate of Cook v Gomez***, *supra*; ***Boulos v Lerner-Harrington***, *supra*; ***Jones v Vialva-Duke***, *supra*). Gilmore testified that she was completely stopped in heavy traffic, and that she had been stopped for approximately 40 seconds. Gilmore testified that she brought her vehicle to a stop behind plaintiff's vehicle, and that there was approximately six to eight feet between her front bumper and plaintiff's rear bumper. Gilmore testified that she felt two collisions, the first from the rear as she was struck by Ridge's vehicle, and the second to the front as she was propelled forward into plaintiff's vehicle. Gilmore also submits the transcript of the deposition testimony of Ridge, who testified that he was traveling behind Gilmore before the accident. Ridge testified that he came to a complete stop behind Gilmore's vehicle, which was also completely stopped, and that he was then struck from behind by a non-party vehicle, which propelled him forward into the rear of Gilmore's vehicle.

Gilmore having met her initial burden on the motion, the burden now shifts to the opposing parties to submit evidence, in an admissible form, of a material issue of fact requiring a trial on the issue of Gilmore's liability (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Here, plaintiff has failed to raise a triable issue of fact with respect to Gilmore's liability. Plaintiff testified that he was completely stopped in traffic at the time of the accident, but that he did not observe Gilmore's vehicle until after her vehicle struck the rear of his vehicle.

Accordingly, the motion by Gilmore for summary judgment dismissing the complaint and the cross claims against her is granted. As such, the branch of the motion by plaintiff for summary judgment on the issue of Gilmore's liability is denied, as moot.

With respect to the branch of plaintiff's motion for partial summary judgment on the issue of Ridge's liability, plaintiff has established, prima facie, entitlement to summary judgment in his favor on the issue of Ridge's liability through his submissions (*see* ***Lopez v Dobbins***, 164 AD3d 776, 79 NYS3d 566 [2d Dept 2018]; ***Tsyganash v Auto Mall Fleet Mgt., Inc.***, 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; ***Niyazov v Hunter EMS, Inc.***, 154 AD3d 954, 63 NYS3d 457 [2d Dept 2017]). To establish prima facie entitlement to judgment as a matter of law on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault (***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2018]; ***Bloechle v Heritage Catering, Ltd.***, 172 AD3d 1294, 101 NYS3d 424 [2d Dept 2019]; ***Marks v Rieckhoff***, 172 AD3d 847, 101 NYS3d 63 [2d Dept 2019]; ***Auguste v Jeter***, 167 AD3d 560, 560, 88 NYS3d 509 [2d Dept 2018]). The issue of a plaintiff's comparative negligence may, however, be decided in the context of a summary judgment motion if the plaintiff moves for summary judgment dismissing a defendant's affirmative defense of comparative negligence (***Poon v Nisanov***, 162

AD3d 804, 79 NYS3d 227 [2d Dept 2018]). As discussed above, plaintiff testified that he was completely stopped in traffic when he was struck from behind by Gilmore's vehicle, which was propelled into plaintiff's vehicle after it was struck by Ridge's vehicle.

Plaintiff having established his prima facie burden on the branch motion for summary judgment on the issue of Ridge's liability, the burden now shifts to Ridge to raise a triable issue of fact with respect to whether there was a non-negligent explanation for the accident (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Miller v Steinberg***, *supra*; *see generally* ***Rodriguez v City of New York***, *supra*). Ridge fails to oppose the motion which, in effect, is a concession that no question of fact exists, and the facts as alleged in the moving papers may be deemed admitted (*see* ***Kuehne & Nagel v Baiden***, 36 NY2d 539, 369 NYS2d 667 [1975]; ***114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC***, 178 AD3d 757, 114 NYS3d 100 [2d Dept 2019]). Therefore, the branch of plaintiff's motion for partial summary judgment on the issue of Ridge's liability is granted.

Dated: March 4, 2021

J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION