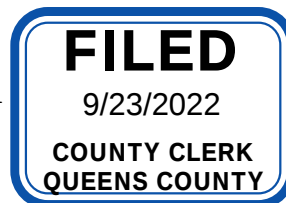


Reed v Singh
2022 NY Slip Op 35072(U)
September 22, 2022
Supreme Court, Queens County
Docket Number: Index No. 725326/2021
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
 CIVIL TERM - IAS PART 34 - QUEENS COUNTY
 25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101



P R E S E N T : HON. ROBERT J. MCDONALD
 Justice

- - - - - x

ROBERT L. REED,

Index No.: 725326/2021

Plaintiff,

Motion Date: 9/22/22

- against -

Motion Nos.: 24 & 25

MANINDER SINGH, KAUR SUKHWINDER, WEI
 LI GU and RONALD A. MANGAL,

Motion Seqs.: 1 & 2

Defendants.

- - - - - x

The following electronically filed documents read on this motion by defendants MANINDER SINGH and KAUR SUKHWINDER (**seq. no. 1**) for an Order pursuant to CPLR 3212, granting said defendants summary judgment and dismissing the complaint and all cross-claims against them; and on this motion by defendant WEI LI GU (**seq. no. 2**) for same:

	Papers Numbered
Notice of Motion(seq. no. 1)-Affirmation-Exhibits....	EF 20 - 26
Gu's Response.....	EF 36 - 37
Mangal's Affirmation in Opposition-Exhibits.....	EF 39 - 41
Affirmation in Reply.....	EF 45
Plaintiff's Affirmation in Opposition.....	EF 47 - 48
Affirmation in Reply.....	EF 52
Notice of Motion(seq. no. 2)-Affirmation-Exhibits....	EF 31 - 34
Mangal's Affirmation in Opposition-Exhibits.....	EF 42 - 44
Affirmation in Reply.....	EF 46
Plaintiff's Affirmation in Opposition.....	EF 49 - 50
Affirmation in Reply.....	EF 51

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on October 1, 2019 on the Belt Parkway, in Queens County, New York.

This action was commenced by the filing of a summons and complaint on November 12, 2021. Defendant Gu joined issue by service of an answer on December 27, 2021. Gu filed an amended answer on June 28, 2022. Defendants Singh and Sukhwinder joined

issue by service of an answer on March 24, 2022. Defendant Mangal joined issue by service of an answer on April 25, 2022. Defendants Singh and Sukhwinder and defendant Gu now move for summary judgment.

In support, Singh submits an affidavit, affirming that the accident occurred while he was operating his mother Sukhwinder's vehicle with her permission and consent. He was fully stopped in traffic behind plaintiff's vehicle when his vehicle was rear-ended by Gu's vehicle. At the time of impact to the rear of his vehicle, his foot was on the brake. As a result of the impact, his vehicle was pushed into the rear of plaintiff's vehicle. He later learned that Mangal's vehicle struck Gu's vehicle in the rear and pushed Gu's vehicle into his vehicle. He did not cause or contribute to the accident.

Gu submits an affidavit, affirming that he observed Singh's vehicle make a sudden and unexpected stop. He braked hard to avoid an impact. His vehicle was stopped for approximately one second when he was struck in the rear by Mangal's vehicle. At the moment of impact, his vehicle was on the brake. As a result of the impact, his vehicle was pushed forward into the rear of Singh's vehicle. There were two impacts to his vehicle. The first was to the rear of his vehicle. The second was to the front of his vehicle. There was no action that he could have taken to avoid the accident. Following the accident, he spoke with Mangal at the scene. Mangal said he was "unable to come to a full stop".

In the accident description portion of the certified Police Accident Report (MV-104AN), the responding officer noted:

AT T.P.O ALL VEHICLES WERE GOING E/B IN THE LEFT LANE OF THE BELT PARKWAY. THE MOTORIST OF VEHICLE #1 (Plaintiff) STATED HE WAS STOPPED IN TRAFFIC AND WAS REAR ENDED BY VEHICLE #2. THE MOTORIST OF VEHICLE #2 (Singh) STATED HE WAS STOPPING WHEN HE WAS REAR ENDED BY VEHICLE #2 INTO VEHICLE #1. THE MOTORIST OF VEHICLE #3 (Gu) STATED HE WAS STOPPING WHEN HE WAS REAR ENDED BY VEHICLE #4 INTO VEHICLE #2. THE MOTORIST OF VEHICLE #4 (Mangal) STATED HE SAW THE VEHICLES IN FRONT OF HIM STOP SUDDENLY AND WAS UNABLE TO STOP BEFORE COLLIDING WITH VEHICLE #3.

Based on the evidence submitted, moving defendants contend that summary judgment is warranted as co-defendant driver Mangal violated Vehicle and Traffic Law Section 1129(a) by failing to maintain a safe distance between his vehicle and the vehicle ahead of him and by striking defendant Gu's vehicle in the rear, causing the chain reaction collision. Also, co-defendant driver

Mangal failed to see what should have been seen and failed to exercise reasonable care under the circumstances to avoid a collision.

In opposition, defendant Mangal and plaintiff each contend that the summary judgment motions are premature. Although defendant Mangal also contends that the Police Accident Report should not be considered because it contains hearsay statements, defendant Mangal's statement that he was unable to stop before colliding with the vehicle ahead of him is admissible against defendant as an admission (see Brown v URS Midwest, Inc., 132 AD3d 936 [2d Dept. 2015]).

The proponent of a 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 or her position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

It is well established law 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 rearmost vehicle, requiring the operator of that vehicle to proffer an adequate, non-negligent explanation for the accident (see Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]; Hakakian v McCabe, 38 AD3d 493 2d Dept. 2007]; Reed v New York City Transit Authority, 299 AD2 330 [2d Dept. 2002]; Velazquez v Denton Limo, Inc., 7 AD3d787 [2d Dept. 2004]. "The rearmost driver in a chain-reaction collision bears a presumption of responsibility" (Ferguson v Honda Lease Trust, 34 AD3d 356 [1st Dept. 2006], quoting De La Cruz v Ock Wee Leong, 16 AD3d 199 [1st Dept. 2005]). In multiple-car, chain-reaction accidents, the courts have recognized that the operator of a vehicle that has come to a complete 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 Mohamed v Town of Niskayuna, 267 AD2d 909 [3d Dept. 1999]).

Here, both Singh and Gu established that their vehicles were stopped or stopping at the time of the accident. Thus, movants satisfied their prima facie burden (see Robayo v Aghaabdul, 109 AD3d 892 [2d Dept. 2013]; Sayyed v Murray, 109 AD3d 464 [2d Dept. 2013]; Prosen v Mabella, 107 AD3d 870 [2d Dept. 2013]; Xian Hong Pan v Buglione, 101 AD3d 706 [2d Dept. 2012]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to the non-moving parties to raise a triable issue of fact as to whether movant was also negligent, and if so, whether that negligence contributed to the happening of the accident (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

The non-moving parties, who did not submit any affidavits in opposition to the motion, failed to provide evidence of a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Bernier v Torres, 79 AD3d 776 [2d Dept. 2010]; Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Cavitch v Mateo, 58 AD3d 592 [2d Dept. 2009]; Garner v Chevalier Transp. Corp., 58 AD3d 802 [2d Dept. 2009]; Kimyaqarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). An attorney's affirmation is insufficient to defeat a summary judgment motion (see Zuckerman, 49 NY2d at 563).

Additionally, any allegation that the moving parties' vehicles abruptly stopped is insufficient to raise a triable issue of fact (see Johnson v Spoto, 47 AD3d 888 [2d Dept. 2008]; Shamah v Richmond County Ambulance Serv., 279 AD2d 564, 565 [2d Dept. 2001] ["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"]).

Lastly, the contention that the motions for summary judgment are premature is without merit. The non-moving parties failed to offer any evidentiary basis to suggest that discovery may lead to relevant evidence. The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis upon which to deny the motion (see CPLR 3212[f]; Medina v Rodriguez, 92 AD3d 850 [2d Dept. 2012]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]).

Accordingly, and for the reasons stated above, it is hereby,

ORDERED, that the summary judgment motion by defendants MANINDER SINGH and KAUR SUKHWINDER (**seq. no. 1**) is granted, the complaint and any and all cross-claims are dismissed as against defendants MANINDER SINGH and KAUR SUKHWINDER, and the Clerk of Court is authorized to enter judgment accordingly; and it is further

ORDERED, that the summary judgment motion by defendant WEI LI GU (**seq. no. 2**) is granted, the complaint and any and all cross-claims are dismissed as against defendant WEI LI GU, and the Clerk of Court is authorized to enter judgment accordingly.

Dated: September 22, 2022
Long Island City, N.Y

Robert J. McDonald

ROBERT J. MCDONALD
J.S.C.