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

CHATERBESAL SINGH,

Plaintiff,

- against -

ROBERT J. ZATTO and GINA M. BERT-ZATTO,

Defendants.

- x

Index No.: 702442/2012

Motion Date: 06/12/13

Motion No.: 113

Motion Seq.: 1

The following papers numbered 1 to 15 were read on this motion by plaintiff, CHATERBESAL SINGH, for an order pursuant to CPLR 3212(b) granting plaintiff partial summary judgment on the issue of liability and setting the matter down for a trial on damages:

	Papers Numbered
Notice of Motion-Affirmation-Exhibits	1 - 6
Affirmation in Opposition- Affidavits	7 - 11
Affirmation in Reply	12 - 15

In this action for negligence, the plaintiff, CHATERBESAL SINGH, seeks to recover damages for personal injuries he allegedly sustained as a result of a multi-vehicle accident that occurred on October 4, 2011. The motor vehicle accident took place on the Jackie Robinson Parkway near the intersection with Cemetery Road in Queens County, New York. Plaintiff alleges that he sustained injuries when his vehicle, which was stopped in traffic, was struck in the rear by the vehicle owned by defendant Robert J. Zatto and operated by defendant Gina M. Bert-Zatto.

This action was commenced by the plaintiff by the service of a summons and complaint on October 11, 2012. Issue was joined by service of defendants' verified answer dated November 16, 2012. Plaintiff now moves for an order pursuant to CPLR 3212(b), granting partial summary judgment on the issue of liability and setting this matter down for a trial on damages.

In support of the motion, the plaintiff submits an affirmation from counsel, Scott L. Wiss, Esq; a copy of the pleadings; plaintiff's verified bill of particulars; an affidavit of facts from the plaintiff; and a copy of the police report (MV-104).

In his affidavit dated March 12, 2013, plaintiff, Chaterbesal Singh, states that on October 4, 2011, he was a driver of a vehicle that was stopped in traffic on the Jackie Robinson Parkway at or near its intersection with Cemetery Road. He stated that he was stopped for at least five seconds before he felt a heavy impact to the rear of his vehicle. He states that the vehicle that struck him was being operated by defendant Gina M. Bert-Zatto.

The description of the accident contained in the police report is based upon statements made to the officer at the scene. The report states: "at t/p/o Vehs # 2(plaintiff), #3 (non-party), and #4(nonparty), were slowing down for traffic at which time Veh # 1 (defendant) hit the rear of vehicle #2 (plaintiff) causing Vehicle # 2 to hit he rear of vehicle # 4, and veh # 4 hit the rear of vehicle # 3(lead vehicle).

The plaintiff contends that the defendant driver was negligent in the operation of her vehicle in striking the plaintiff's vehicle in the rear. Plaintiff's counsel contends that the accident was caused solely by the negligence of the defendant driver in that her vehicle was traveling too closely in violation of VTL § 1129(a) and that the driver failed to safely stop her vehicle prior to rear-ending the plaintiff's vehicle. Counsel contends that the evidence indicates that the plaintiff's vehicle was lawfully stopped in traffic on the Jackie Robinson Parkway when it was struck from behind by the defendants' vehicle. Counsel contends, therefore, that the plaintiff is entitled to summary judgment because defendant was traveling only one car length behind the van in front of her and could not stop her vehicle in time after the van moved out of the way. Counsel states that the failure maintain a safe distance in the absence of a non-negligent explanation constitutes negligence as a matter of law. Plaintiff alleges that the defendant was solely responsible for causing the accident while the plaintiff was free from culpable conduct.

In opposition, defendants' counsel, Lorraine M. Korth, Esq. submits the affidavit of the defendant driver, Gina M. Bert-Zatto, which states, "this action arises out of what I believe were two collisions that occurred on October 4, 2011 in the

westbound Jackie Robinson Parkway. I had been driving...at least a car length behind a high van. I was unable to see what was in front of the van due to its height. Suddenly, without warning, the van violently swerved into the adjacent lane, without applying its brakes. No brake lights ever came on the van. Upon observing the unexpected actions of the van, I immediately applied my brakes. At the same time that the van swerved I saw what appeared to be an accident in the lane ahead of me. There were four vehicles stopped in the left lane. Although my car slowed, I was unable to avoid making contact with the rear of the last of the four vehicles that were stopped in that lane. The circumstances of what occurred that day was the result, I believe, of an accident involving the vehicles ahead of me before I was aware of it, and further, I was not able to see that accident due to the large van that was driving in the lane ahead of me. I had no prior warning that those vehicles were stopped in the lane in front of the van."

Counsel states that based upon the affidavit of the defendant, the defendant's view was blocked by the presence of a large van traveling in the lane ahead of the defendant's vehicle which only became visible when the van suddenly and without braking swerved into the adjacent lane. Counsel asserts that the defendant's explanation of what happened constitutes a reasonable non-negligent explanation for the rear end collision (citing Abbot v Picture Cars Eqst, Inc., 78 AD3d 869[2d Dept. 2010][plaintiff abruptly changed lanes in front of defendant's vehicle and then applied his brakes, creating an insufficient distance for him to stop in time]).

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 position (see Zuckerman v City of New York, 49 NY2d 557[1980]).

"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" (Macauley v ELRAC, Inc., 6 AD3d 584 [2d Dept. 2003]). 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 Raimondo v

Plunkitt, 102 AD3d 851 [2d Dept. 2013]; 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].

Here, plaintiff testified that his vehicle was completely stopped in traffic for at least five seconds on the Jackie Robinson Parkway when it was struck from behind by the vehicle operated by the defendant. Thus, the plaintiff satisfied his prima facie burden of establishing entitlement to judgment as a matter of law on the issue of liability by demonstrating that his vehicle was stopped when it was struck in the rear by the vehicle operated by defendant (see Volpe v Limoncelli,74 AD3d 795 [2d Dept. 2010]; Vavoulis v Adler, 43 AD3d 1154 [2d Dept. 2007]; Levine v Taylor, 268 AD2d 566 [2d Dept. 2000]).

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

This court finds that the defendant failed to submit evidence as to any negligence on the part of plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (see Lampkin v Chan, 68 AD3d 727 [2d Dept. 2009]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005]). If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants of the stationary vehicle are entitled to summary judgment on the issue of liability (see Kimyagarov v Nixon Taxi Corp., 45 AD3d 736 [2d Dept. 2007]). The evidence demonstrated that the plaintiff, who was in a stopped vehicle, operated his vehicle in a nonnegligent manner and no evidence was presented to show that he contributed to the happening of the injury-producing event (see Aikens-Hobson v. Bruno, 97 AD3d 709[2d Dept. 2012]; Daramboukas v Samlidis, 84 AD3d 719 [2d Dept. 2011]; Franco v Breceus, 70 AD3d 767[2d Dept. 2010]; Shirman v Lawal, 69 AD3d 838 [2d Dept. 2010]; Katz v Masada II Car & Limo Serv., Inc., 43 AD3d 876 [2d Dept. 2007]). Further, although defendant states that she did not see the plaintiff's stopped vehicle until the truck in front of her moved out of the way, this does not explain her failure to maintain a safe distance from the vehicle in front of her [see Dicturel v Dukureh,71 AD3d 558 [1st Dept. 2010]; Shirman v Lawal,69 AD3d 838 [2d Dept. 2010]; Lampkin v Chan,68 AD3d 727 [2d Dept. 2009]; Zdenek v Safety Consultants, Inc.,63 AD3d 918

[2d Dept. 2009]). Here, the defendant failed to maintain a reasonably safe distance and failed to exercise reasonable care to see what was in front of her vehicle and to avoid colliding with the plaintiff's vehicle {see Hackney v Monge, 103 AD3d 844 [2d Dept. 2013]; Hearn v Manzolillo, 103 AD3d 689 [2d Dept. 2013]; Taing v Drewery, 100 ADd 740 [2d Dept. 2012]; Byrne v Calogero, 96 AD3d 704 [2d Dept. 2012]; Franco v Breceus, 70 AD3d 767 [2d Dept. 2010]).

The defendants' contention that the plaintiff's motion for summary judgment is premature is without merit. The defendants 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]; Hanover Ins. Co. v Prakin, 81 AD3d 778 [2d Dept. 2011]; Essex Ins. Co. v Michael Cunningham Carpentry, 74 AD3d 733 [2d Dept. 2010]]; Hill v Ackall, 71 AD3d 829 [2d Dept. 2010]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]).

Accordingly, this court finds that in opposition to plaintiff's motion, defendant failed to submit any evidence sufficient to raise a triable issue of fact (see Arias v Rosario, 52 AD3d 551 [2d Dept. 2008]; Smith v Seskin, 49 AD3d 628 [2d Dept.2008]; Campbell v City of Yonkers, 37 AD3d 750 [2d Dept. 2007]). As the evidence in the record demonstrates that the defendant failed to provide a non-negligent explanation for the collision and as no triable issues of fact have been put forth as to whether plaintiff may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the plaintiff's motion is granted, and the plaintiff, CHATERBESAL SINGH, shall have partial summary judgment on the issue of liability against the defendants, ROBERT J. ZATTO and GINA M. BERT-ZATTO, and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, this action remains on the trial calendar of the Court for completion of discovery and trial as to damages.

Dated: June 19, 2013
Long Island City, N.Y

ROBERT J. MCDONALD
J.S.C.