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

GARTH HARRIS,

Plaintiff,

- against -

ADEBISI USUDUN, GLADSTONE GREEN, ROSEMARIE GREEN, MICHAEL SWIRSKY and RICHARDINE ST. LOUIMIE,

Defendants.

- x

Index No.: 22789/2011

Motion Date: 07/05/12

Motion No.: 10

Motion Seq.: 1

The following papers numbered 1 to 18 were read on this motion by defendants GLADSTONE GREEN and ROSEMARIE GREEN for an order pursuant to CPLR 3212(b) granting summary judgment on the issue of liability and dismissing the plaintiff's complaint against said defendants:

	Papers Numbered
Green Notice of Motion-Affidavits-Exhibits	1 - 6
Defendant St. Louimie's Affirmation in Opposition	7 - 10
Defendant Swirsky's Affirmation in Opposition	11 - 13
Green's Reply Affirmations(2)	14 - 18

In this negligence action, the plaintiff, GARTH HARRIS, seeks to recover damages for personal injuries sustained as a result of a five-vehicle, chain reaction accident, that occurred on June 3, 2010, on North Conduit Avenue at its intersection with 222nd Street, Queens, New York. At the time of the accident defendant Rosemarie Green, the first car in the chain, was the operator of a motor vehicle owned by her husband Gladstone Green. Ms. Green submits an affidavit, dated April 27, 2012, stating that on June 3, 2010, her vehicle was completely stopped at a red light on the westbound side of North Conduit Avenue at its

intersection with 222nd Street. She states that while stopped at the light behind ten other vehicles, her vehicle was struck in the rear. Her vehicle did not move as a result of the impact and there was no damage to her car. The car behind Ms. Green's vehicle was the vehicle operated by Adebisi Usudun. Usudun's vehicle was struck in the rear by the third vehicle, operated by the plaintiff Garth Harris, and propelled in the Green vehicle. Mr Harris's vehicle was struck by the fourth vehicle operated by Michael Swirsky which propelled it into the Usudun vehicle. The fifth vehicle in the chain was operated by Richardine St. Louimie. St. Louimie's vehicle struck the Swirsky vehicle propelling it into plaintiff, Harris's vehicle. Thus, St. Louimie's vehicle first struck Swirsky, which struck plaintiff Harris, which struck Usudun, which struck Green.

The Green defendants now move for an order pursuant to CPLR 3212(b), granting summary judgment on the issue of liability and dismissing the plaintiff's action against them as well as all cross-claims.

In support of the motion, the plaintiffs submit an affidavit from counsel, Sara R. David, Esq., a copy of the pleadings, a copy of the police accident report (MV-104), and an affidavit of facts from defendant Rosemarie Green.

Ms. Green's counsel contends that the evidence submitted in support of the motion for summary judgment demonstrates that the her vehicle, the first vehicle of the five cars, was lawfully stopped behind other vehicles waiting at a red traffic signal when it was rear-ended by the Usudun vehicle. Counsel contends that summary judgment should be awarded to Ms. Green, dismissing the plaintiff's complaint and all cross-claims against her because the evidence showed that Ms. Green was completely stopped at the time of the accident and the sole proximate cause of the accident was the negligence the other vehicles in rear-ending the Green vehicle and further, there is no evidence in the record that Ms. Green was negligent in any manner.

In opposition to the motion, Cecilia Proano, Esq., counsel for Michael Swirsky did not submit an affidavit from Mr. Swirsky nor has she proffered any allegations of fact which would contradict Ms. Green's version of the accident. Counsel contends, however, that the plaintiff's motion for summary judgment is premature as depositions of the parties have not been conducted.

Christopher Blackman, Esq., counsel for Richardine St. Louimie, the operator of the fifth vehicle, which initiated the

chain reaction, submits an affidavit from Mr. St. Louimie in which he states that at the time of the accident he was the operator of the last of the five vehicles. He states that his vehicle contacted the rear of the Swirsky vehicle because it stopped short in front of his vehicle. He also states that the first vehicle operated by Ms. Green "suddenly, abruptly and unexpectedly stopped short upon approaching the intersection and traffic light. As a result of the sudden stop by Green's vehicle, the three trailing vehicles in front of my vehicle were forced to stop short." He states that prior to the accident he was traveling behind Swirsky's vehicle at a safe distance going 10 - 15 miles per hour in heavy, rush hour traffic conditions. He states that due to the sudden, abrupt and unexpected nature of Green's stop he applied his brakes but was unable to avoid making light contact with the rear of Swirsky's vehicle. He states that the fact that the vehicles in front of him were traveling too closely together, were traveling too fast for the roadway conditions, and all stopped short, were all substantial factors in causing the accident.

Mr. St. Louimie's counsel contends that Ms. Green has failed to establish a prima facie showing of negligence on the part of the other drivers and failed to establish that she was free from negligence. In addition, he claims that the conflicting affidavits of Ms. Green and Mr. St. Louimie create an issue of fact and establish that there was a non-negligent explanation for the rear-end collision. Counsel contends that a sudden negligent unexplained stop of the lead vehicle can constitute a non-negligent explanation for the rear-end collision (citing Napolitano v Galletta, 85 AD3d 881 [2d Dept. 2011]).

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]).

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].

Here, Ms. Green states in her affidavit that her vehicle was at a complete stop at a red traffic signal when her vehicle was struck in the rear. "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 which has come to a complete stop 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 [3rd Dept. 1999]). Here, Green who was stopped at the time of the impact, in front of the plaintiff's vehicle demonstrated that her conduct was not a proximate cause of the chain reaction collision (see Abrahamian v Tak Chan, 33 AD3d 947 [2d Dept. 2006]; Calabrese v Kennedy, 8 AD3d 505 [2d Dept. 2006]; Ratner v Petruso, 274 AD2d 566 [2d Dept. 2000]). Thus, defendant Green satisfied her prima facie burden of establishing entitlement to judgment as a matter of law by demonstrating that her vehicle was the first car stopped at the time it was struck in the rear in a chain reaction which was commenced by defendant Richardine St. Louimie.

In addition, as Green, in the first vehicle, was stopped two vehicles in front of the plaintiff's vehicle, the proof submitted demonstrates, prima facie, that the complaint should be dismissed against Green as Green's action were not the proximate cause of the accident or any of the injuries claimed by the plaintiff (see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011]; Parra v Hughes, 79 AD3d 1113 [2d Dept. 2011]; Mustafaj v Driscoll, 5 AD3d 139 [1st Dept. 2004]; McNulty v DePetro, 298 AD2d 566 [2d Dept. 2002]; Harris v Ryder, 292 AD2d 499 [2d Dept. 2002]; Cerda v Paisley, 273 AD2d 339 [2d Dept. 2000]).

Having made the requisite prima facie showing of entitlement to summary judgment, the burden then shifted to defendants to raise a triable issue of fact as to whether Green 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]). This court finds that defendant Swirsky, who did not submit an affidavit in opposition to the motion, failed to provide evidence as to 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]; Kimyagarov v Nixon Taxi Corp, 45 AD3d 736 [2d Dept. 2007]; Gomez v Sammy's Transp., Inc., 19 AD3d 544 [2d Dept. 2005][the

defendants failed to raise a triable issue of fact by only interposing an affirmation of their attorney who lacked knowledge of the facts]).

Swirsky's contention that the motion for summary judgment is premature is without merit. Swirsky 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]]; Peerless Ins. Co. v Micro Fibertek, Inc., 67 AD3d 978 [2d Dept. 2009]; Gross v Marc, 2 AD3d 681 [2d Dept. 2003]).

St. Louimie's contention that there is a question of fact based upon his observation that the vehicles in front of him stopped short is without merit. Although defendant maintains that the accident was the result of the vehicles in front of him, including Ms. Green and Mr. Swirsky's braking or stopping suddenly, this does not explain his failure to maintain a safe distance from the vehicle in front of him [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]). The defendant's argument that Green's and Swirsky's vehicles stopped short is not sufficient to provide a non-negligent explanation for the rear-end collision (see Plummer v Nourddine, 82 AD3d 1069 [2d Dept. 2011][the mere assertion that the defendant's (vehicle) came to a sudden stop while traveling in heavy traffic was insufficient to raise a triable issue of fact}]; Staton v Ilic, 69 AD3d 606 [2d Dept. 2010]; Ramirez v Konstanzer, 61 AD3d 837 [2d Dept. 2009]).

The plaintiff and defendant Adebisi Usudun have not opposed Greens' motion for summary judgment.

Thus, as the evidence in the record demonstrates that there are no triable issues of fact as to whether Ms. Green may have borne comparative fault for the causation of the accident, and based on the foregoing, it is hereby,

ORDERED, that the motion by defendants GLADSTONE GREEN and ROSEMARIE GREEN for summary judgment is granted, and the plaintiff's complaint and all cross-claims against said defendants are dismissed and the Clerk of Court is authorized to enter judgment accordingly.

Dated: July 6, 2012
Long Island City, N.Y.

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ROBERT J. MCDONALD
J.S.C.