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

KELLY ANN STOCK,

Plaintiff,

- against -

ELLA J. YORO,

Defendant.

Index No.: 713776/2018

Motion Date: 1/31/19

Motion No.: 39

Motion Seq.: 1

- x

The following electronically filed documents read on this motion by plaintiff for an Order pursuant to CPLR 3212, granting plaintiff partial summary judgment, and striking defendant's affirmative defenses:

	Papers Numbered
Notice of Motion-Affirmation-Exhibits	EF 6 - 9
Affirmation in Opposition-Exhibits	EF 10 - 11
Reply Affirmation	EF 12

This is an action for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on March 30, 2018 on the Grand Central Parkway, in Queens County, New York.

This action was commenced by the filing of a summons and complaint on September 7, 2018. Defendant joined issue by service of answer on October 15, 2018. Plaintiff now seeks summary judgment on the issue of liability.

Plaintiff submits an affidavit dated November 26, 2018, affirming that on March 30, 2018 at approximately 6:15 p.m., she was operating her vehicle in the far right lane on the Grand Central Parkway near the Jewel Avenue exit in Queens County, New York. At the time of the accident, she was wearing her seatbelt. It was raining lightly, drizzling. The roadways were wet. She was driving in heavy, stop-and-go, rush hour traffic. Just prior to

the accident, she brought her vehicle to a gradual full stop behind the vehicle in front her that had also come to a full stop due to the heavy traffic. She was at a full stop for approximately seven second when suddenly, and without warning, the rear of her vehicle was struck by defendant's vehicle. As a result of the impact, her vehicle was propelled forward approximately five feet.

Plaintiff also submits a copy of the Police Accident Report (MV-104AN). In the accident description portion, the responding officer notes, in relevant part:

> AT TPO VEHICLE ONE AND TWO WERE TRAVELING E/B IN THE RIGHT LANE OF THE GCP WHEN VEHICLE ON [sic] SLOWED FOR TRAFFIC. VEHICLE TWO (DEFENDANT) STRUCK VEHICLE ONE (PLAINTIFF) FROM BEHIND.

Based on the submitted evidence, counsel for plaintiff contends that summary judgment is warranted as defendant violated Vehicle and Traffic Law Section 1129(a) by failing to maintain a safe distance between her vehicle and plaintiff's vehicle and by striking plaintiff's vehicle in the rear. Counsel also contends that defendant failed to see what should have been seen and failed to exercise reasonable care under the circumstances to avoid a collision.

In opposition, defendant submits an affidavit dated January 9, 2019, affirming that the accident occurred in the left lane of the Grand Central Parkway eastbound near exit 13 or exit 14 at around 6:00 p.m. At the time of the accident, it was bright outside, raining moderately, and the roads were wet. Her highest rate of speed while traveling on the Grand Cental Parkway was fifteen to twenty miles per hour. Traffic was moving slowly, and the road was slippery. The Police Accident Report incorrectly states that the accident occurred in the right lane. Just before the accident, plaintiff's vehicle came to a sudden stop. About twenty feet separated the front of her vehicle from the rear of plaintiff's vehicle as it was bumper to bumper traffic. She was traveling between five and ten miles per hour when plaintiff stopped suddenly. She slowly applied her brakes because the road was slippery. Despite her best efforts to stop her vehicle on time, her vehicle slid forward when she applied her brakes, resulting in the middle front of her vehicle coming into contact with the middle rear of plaintiff's vehicle.

Based on defendant's affidavit, counsel contends that the motion must be denied as issues of fact remain, including, inter alia, whether defendant's conduct fell below the permissible

standard of care. Additionally, counsel contends that the Police Accident Report is inadmissible as it is not certified. Lastly, counsel contends that the motion is premature as discovery is likely to reveal material.

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]).

"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 Delgado v Bang, 120 AD3d 608 [2d Dept. 2014]; Kertesz v Jason Transp. Corp., 102 AD3d 658 [2d Dept. 2013]; Ramos v TC Paratransit, 96 AD3d 924 [2d Dept. 2012]; Pollard v Independent Beauty & Barber Supply Co., 94 AD3d 845 [2d Dept. 2012]; Klopchin v Masri, 45 AD3d 737 [2d Dept. 2007]).

Here, plaintiff established that her stopped vehicle was rear-ended by defendant's vehicle. Thus, plaintiff satisfied her prima facie burden of establishing entitlement to summary judgment as a matter of law (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 the non-moving parties to rebut the presumption of negligence (see Goemans v County of Suffolk, 57 AD3d 478 [2d Dept. 2007]).

Although defendant maintains that the accident was the result of plaintiff's vehicle stopping suddenly and the wet condition of the roadway causing her vehicle to skid, such is insufficient to rebut the presumption that defendant was negligent (see Hurley v Cavitolo, 239 AD2d 559 [2d Dept. 1997]). A bare claim that the driver of the lead vehicle suddenly stopped, standing alone, is insufficient to rebut the presumption

of negligence, especially where, as here, defendant driver fails to explain why he or she did not maintain a safe following distance (see Brothers v Bartling, 130 AD3d 554 [2d Dept. 2015][finding that defendant's assertion that it was the sudden stop of plaintiff's vehicle in traffic that was moving slowly was insufficient, in and of itself, to raise a triable issue of fact as to whether there was a nonnegligent explanation for the rear-end collision]; Le Grand v Silberstein, 123 AD3d 773 [2d Dept. 2014]; Gutierrez v Trillium USA, LLC, 111 AD3d 669 [2d Dept. 2013]). Moreover, vehicle stops which are foreseeable under the prevailing traffic conditions 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 vehicle and the vehicle ahead (see Theo v Vasquez, 136 AD3d 795 [2d Dept. 2016]).

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

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

ORDERED, that plaintiff's summary judgment motion is granted, plaintiff shall have summary judgment on the issue of liability against defendant, defendant's affirmative defenses are dismissed, and the Clerk of Court is authorized to enter judgment accordingly; and it is further

ORDERED, that upon completion of discovery on the issue of damages, filing a Note of Issue, and compliance with all the rules of the court, this action shall be placed on the trial calendar of the court for a trial on serious injury and damages.

Dated: January 31, 2019
Long Island City, N.Y

ROBERT J. MCDONALD
J.S.C.