Short Form Order

**NEW YORK SUPREME COURT - QUEENS COUNTY**

Present: Honorable **RICHARD G. LATIN**
Justice

IA PART 40

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ROBERT CAMPBELL,

Plaintiff,

-against-

LARRY OWENS FULTON and TIFFANY BRYANT-FULTON,

Defendants.

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Index No.: 706873/18
Motion Date: 1/10/19
Motion Cal. No.: 4
Motion Seq. No.: 1

The following numbered papers read on this motion by defendants for summary judgment.

| PAPERS | NUMBERED |
|---|---|
| Notices of Motion-Affidavits-Exhibits..... | 1 - 5 |
| Affirmation in Opposition-Exhibits..... | 6 - 9 |
| Replying..... | 10 - 11 |

Upon the foregoing cited papers, it is ordered that defendants' motion for summary judgment dismissing plaintiff's complaint, is determined as follows:

Plaintiff, Robert Campbell, commenced the instant action to recover for injuries he allegedly sustained in a two-car rear-end collision that occurred on July 15, 2017 on the westbound Southern State Parkway approximately ½ mile from the Peninsula Boulevard exit, Town of Hempstead, Nassau, New York. Defendants now seeks summary judgment dismissing Plaintiff's complaint on the basis that a vehicle, operated by Plaintiff and owned by non-party Nadine E. Cohall, rear-ended their vehicle, owned by defendant Tiffany Bryant-Fulton and operated by defendant Larry Owens Fulton (Defendant-Driver).

The proponent of a summary judgment motion has the initial burden of establishing entitlement to judgment as a matter of law, submitting evidence in admissible form demonstrating the absence of any triable issues of fact (*see Giuffrida v. Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movant satisfies its prima facie burden will the burden shift to the opponent "to lay bare his or her proof and demonstrate the existence of triable issues of fact" (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Chance v. Felder*, 33 AD3d 645, 645-46 [2d Dept 2006]).

In support of the motion, Defendants submit, inter alia, an affidavit of Defendant-Driver. Defendant-Driver avers that on the date and time of the accident Defendants' vehicle was stopped and disabled in the left lane with its headlights, interior lights, and hazard lights on. Defendant-Driver avers that approximately 5-10 minutes prior to the subject accident, his vehicle collided with the median and came to a stop in the left lane. Defendant-Driver claims that he was unable to start the vehicle and he exited his disabled vehicle and waited

for roadside assistance in a grassy area approximately 15-20 feet ahead of Defendants' car. Defendant-Driver further avers that while waiting for help and prior to the subject accident, he witnessed approximately 20-25 cars go around and avoid his disabled vehicle. Defendant-Driver also avers that he witnessed a vehicle (Pickup Truck) driving too fast and swerving into the right lane avoiding Defendants' vehicle; he claims that the vehicle (Plaintiff's vehicle) directly behind the Pickup Truck tried to move to the right lane, but rear-ended Defendants' vehicle.

Vehicle and Traffic Law (VTL) § 1202 (a)(1)(j) provides, in relevant part, "[e]xcept when necessary to avoid conflict with other traffic...no person shall...[s]top, stand or park a vehicle...[o]n a state expressway highway or state interstate route highway...except in an emergency" (*see Marsicano v. Fabrizio*, 61 AD3d 941, 941 [2d Dept 2009]; *Gregson v. Terry*, 35 AD3d 358, 360 [2d Dept 2006]).

Here, Defendants demonstrated that their vehicle was stopped in a moving lane of traffic due to becoming disabled after colliding with the median and was not merely the result of a foreseeable problem of Defendant-Driver's own making, such as running out of fuel (*see Prosen v. Mabella*, 107 AD3d 870, 871 [2d Dept 2013]; *Blasso v. Parente*, 79 AD3d 923, 925 [2d Dept 2010]; *Diaz v. Green*, 47 AD3d 612, 612-13 [2d Dept 2008]; *Gregson*, 35 AD3d at 360-61; *Siegel v. Boedigheimer*, 294 AD2d 560, 561-62 [2d Dept 2002]). Thus, Defendants met their prime facie burden of establishing that they did not violate VTL § 1202 (a)(1)(j) (*id.*).

"Generally, when one causes a public road to become obstructed, there is a duty to 'exercise[] the case that a reasonably prudent person should have under all the circumstances'... The exercise of reasonable care under the circumstances may include warning other motorists of the hazards posed by the obstruction" (*Pinilla v. City of New York*, 136 AD3d 774, 777-78 [2d Dept 2016], quoting *Axelrod v. Krupinski*, 302 NY 367, 370 [1951]; *see Palmer v. Ecco III Enterprises, Inc.*, 153 AD3d 1267, 1268 [2d Dept 2017]).

The driver of a motor vehicle that approaches another vehicle from the rear, must maintain a reasonably safe rate of speed and control over his vehicle, and use reasonable care to avoid colliding with a lead vehicle (*see Comas-Bourne v. City of New York*, 146 AD3d 855, 856 [2d Dept 2017]). It is well-settled law that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability as to the rearmost vehicle, requiring that driver to rebut this inference of negligence by providing a nonnegligent explanation for the collision (*see Tutrani v. County of Suffolk*, 10 NY3d 906, 908 [2008]; *Comas-Bourne*, 146 AD3d at 856; *see also* Vehicle and Traffic Law § 1129[a]).

Here, Defendants demonstrated that, due to an emergency, their vehicle was stopped with its headlights, interior lights, and hazard lights on, for approximately 5-10 minutes prior to the subject rear-end collision (*see Blasso*, 79 AD3d at 925). Further, Defendants showed that prior to the accident, several other vehicles, including the Pickup truck, were able to change lanes and avoid colliding with Defendants' disabled vehicle. Therefore, Defendants have met their prima facie burden by demonstrating that Defendant-Driver exercised reasonable care in warning other drivers of the hazard posed by his disabled vehicle, including keeping his headlights illuminated (*see Palmer*, 153 AD3d at 1268; *Pinilla*, 136

AD3d at 778; *Marsicano*, 61 AD3d at 941). Thus, it is incumbent on Plaintiff to raise a triable issue of fact.

In opposition, Plaintiff submits, inter alia, his affidavit and the relevant Police Accident Report. Plaintiff avers that immediately before the subject accident, he was driving behind a large truck (the Pickup Truck), which obstructed his view of what lay ahead of the Pickup Truck. Plaintiff further claims that the Pickup Truck suddenly swerved into the right lane, at which point he was able to see what lay ahead; he avers that he saw "a car [Defendants' vehicle] protruding into the left lane from having crashed into the median." He further claims that he attempted to stop his vehicle, but it was too late. Finally, Plaintiff avers that "[t]here were no hazard lights or interior lights on in the car."

Generally, the issue of proximate cause is for the jury, however, "liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes" (*Iqbal v. Thai*, 83 AD3d 897, 898 [2d Dept 2011]). The Court finds that Defendants demonstrated their entitlement to judgment as a matter of law by presenting evidentiary proof that Defendant-Driver's conduct in stopping his vehicle in a driving lane merely furnished the condition for the accident, but was not a proximate cause thereof (*see Lee v. D. Daniels Contracting, Ltd.*, 113 AD3d 824, 825 [2d Dept 2014]; *Iqbal*, 83 AD3d at 898; *Siegel*, 294 AD2d at 561-62).

Plaintiff failed to raise a triable issue of fact regarding Defendant-Driver's duty to exercise reasonable care in warning other drivers of the hazard posed by his disabled vehicle. Specifically, Plaintiff failed to rebut the fact that Defendant-Driver allegedly kept his car's headlights on, as well as the fact that several other vehicles, including the Pickup Truck directly in front of Plaintiff's vehicle, were given sufficient warning of the hazard and able to avoid colliding with Defendants' vehicle. The Court notes that the evidence submitted by Plaintiff shows that he was in effect driving blind, as he admittedly could not see what was in the road before him or the Pickup Truck in front of him.

Under these circumstances, the sole proximate cause of the accident was the Plaintiff's negligent failure to see what there was to be seen, to drive at a safe speed, and to maintain a safe distance behind the Pickup Truck, which Plaintiff said obstructed his view of what lay ahead of the Pickup Truck (*see Lee v. D. Daniels Contracting, Ltd.*, 113 AD3d 824, 825 [2d Dept 2014]; *Blasso*, 79 AD3d at 925; *Cuccio v. Ciotkosz*, 43 AD3d 850, 851 [2d Dept 2007]). Thus, even if Defendants violated VTL § 1202 (a)(1)(j) by being stopped in the left lane, the sole proximate cause of the accident was due to Plaintiff's negligence (*see Iqbal*, 83 AD3d at 898)

Accordingly, Defendants' motion for summary judgment dismissing Plaintiff's complaint is granted.

This constitutes the decision and order of the Court.

Dated: January 14, 2019

**RICHARD G. LATIN, J.S.C.**

FILED
JAN 30 2019
COUNTY CLERK
QUEENS COUNTY