 

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

***Decision and Order***

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**Eladio Carvajal**

Index No. 306311/2014

*Plaintiff*

-against-

**Juan A. Sosa** and
**Mariel DeJesus Checodelahoz,**

Howard H. Sherman
*JSC*

*Defendants*

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Plaintiff seeks recovery for injuries alleged to have been sustained on August 26, 2014 in a two vehicle collision at the intersection of Grand Concourse and 182nd Street, Bronx, New York. At the time plaintiff was a passenger in a motor vehicle being operated by non-party Juan F. Jimenez , which while stopped , was struck in the rear by a vehicle being operated by Juan A. Sosa (Sosa) and owned by the co-defendant .

The Note of Issue was filed on February 24, 2016.

Plaintiff now moves for summary judgment on the issue of liability against defendants on the grounds that there is no issue of fact that the sole proximate cause of theaccident was the failure of Sosa to maintain a safe distance behind Jimenez's stopped vehicle. The motion is supported by copies of the pleadings, and admissible [1]

[1] The copy of Carvajal's transcript is signed by plaintiff, and that of Sosa is certified by the court reporter, and defendants rely on the transcript for purposes of their opposition , not

transcripts of the deposition testimony of plaintiff and defendant Sosa. The uncertified copies of the police report tendered are not admissible on the motion (see, Raposo v Robinson, 106 AD3d 593, 965 NYS2d 348 [1st Dept 2013]), Sanchez v. Taveraz, 129 A.D.3d 506, 11 N.Y.S.3d 141 [1st Dept. 2015]).

Defendants oppose the motion contending that unresolved issues of fact preclude an award of summary judgment including the color of the traffic light at the time of the accident , as defendant Sosa testified that when he entered the Grand Concourse the traffic light was green , as well as the issue of whether plaintiff abruptly stopped in the intersection [19].

**Discussion and Conclusions**

It is by now well settled that the proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law , tendering sufficient evidence to demonstrate the absence of a material issues of fact ( Zuckerman v. City of New York, 49 N.Y.2d 557, 404 N.E.2d 718 [1980] ). To support the granting of such a motion , it must clearly appear that no material and triable issue of fact is presented , as the "drastic remedy should not be granted where there is any doubt as to the existence of such issues (*Braun v. Carey*, 280 App.Div. 1019) or where the issue is 'arguable' (*Barrett v. Jacobs*, 255 N.Y. 520, 522); 'issue-finding, rather than issue-determination, is the key to the procedure' (*Esteve v. Avad*, 271 App. Div. 725, 727). " Sillman v. Twentieth Century-Fox

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challenging its accuracy (see, Bennett v Berger, 283 AD2d 374, 726 NYS2d 22 [1st Dept 2001]).

Film Corp., 3 NY2d 395, 404, 144 N.E.2d 387 [1957].

Moreover, " '[a]s a general rule, a party does not carry its burden in moving for summary judgment by pointing to gaps in opponent's proof , but must affirmatively demonstrate the merit of its claim or defense'" (Pace v. International Bus. Mach., 248 AD2d 690,691, 670 N.Y.S.2d 543 [2d Dept 1998], quoting *Larkin Trucking Co. V. Lisbon Tire Mart,* 185 AD2d 614, 615,585 N.Y.S.2d 894, [4th Dept. 1992]; see also, Torres v. Merrill Lynch Purch., 95 A.D.3d 741, 945 N.Y.S.2d 78 [1st Dept. 2012]).

Failure to make such a showing requires the denial of the motion , regardless of the sufficiency of the papers in opposition ( Alvarez v. Prospect Hospital , 68 NY2d 320,324, 501 N.E.2d 572 [1986]; see also, Smalls v. AJI Industires, Inc., 10 NY3d 733, 735, 883 N.E.2d 350 [2008] , *rearg.den.* 10 N.Y.3d 885 ).

Once such a showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial of the action. ( Romano v. St. Vincent's Medical Center of Richmond, 178 AD2d 467 , 577 N.Y.S.2d 311 [2d Dept. 1991];Meridian Mgt. Corp. v. Cristi Cleaning Serv. Corp., 70 A.D.3d 508, 894 N.Y.S.2d 422 [1st Dept. 2010]).

While summary judgment is "is rarely granted in negligence cases since the very question of whether a defendant's conduct amounts to negligence is inherently a question for the trier of fact in all but the most egregious instances (*Wilson v. Sponable,* 81 AD2d 1,

 

5; Siegel, Practice Commentaries, McKinney's Cons Laws of NY Book 7B, CPLR C3212:8,p. 430) " Johnannsdottir v. Kohn, 90 AD2d 842, 456 N.Y.S.2d 86 [2d Dept. 1982] , such a motion will be granted "where the facts clearly point to the negligence of one party without any fault or culpable conduct by the other party." (Morowitz v. Naughton , 150 AD2d 536 [2d Dept. 1989]; see also, Gramble v. Precision Health, Inc., 267 AD2d 66,67 , 699 N.Y.S.2d 393 [1st Dept. 1999]; Spence v. Lake Service Station, Inc., 13 AD 3d 276, 788 N.Y.S.2d 337 [1st Dept. 2004]).

It is settled that drivers must maintain safe distances between their cars and cars in front of them (Vehicle and Traffic Law § 1129 [a]) , and in the case of a rear-end collision with a stopped vehicle , summary judgment on liability would properly lie unless the driver of the following vehicle presents a non-negligent explanation for the accident, or a non-negligent reason for his or her failure to maintain a safe distance behind the lead car (see, Johnson v Phillips, 261 AD2d 269, 271, 690 NYS2d 545 [1st Dept. 1999]; Mullen v Rigor, 8 AD3d 104, 778 NYS2d 168 [1st Dept. 2004]; Avant v. Cepin Livery Corp, 74 A.D.3d 533, 904 N.Y.S.2d 381 [1st Dept. 2010]; Rugova v. Davis, 112 A.D.3d 404, 976 N.Y.S.2d 61 [1st Dept. 2013] ).

Upon consideration of the testimony of plaintiff and defendant Sosa as afforded all favorable inferences in favor of the non-moving defendants, it is the finding of this court that plaintiff has come forward with sufficient probative evidence to demonstrate as a

matter of law that whether the lead vehicle was stopped or in the process of stopping at the time of the accident, or whether or not that vehicle stopped suddenly , there is created on the record a presumption that the rear-end collision was caused solely by the culpable conduct of Sosa in failing to maintain a safe distance behind the plaintiff's vehicle (see, Vehicle and Traffic Law § 1129 [a]; Francisco v. Schoepfer, 30 A.D.3d 275, 817 N.Y.S.2d 52 [1st Dept. 2006]. The court also finds that defendants have failed to come forward with evidence to raise an issue of fact of a non-negligent explanation for the accident, or for the failure to maintain a safe distance behind plaintiff's vehicle.

Accordingly, for the reasons above stated, it is ORDERED that the motion of plaintiff for an order awarding summary judgment on the issue of liability as against defendants be and hereby is granted and it is further ORDERED that upon the completion of all discovery with respect thereto and the filing of the Note of Issue and the payment of all appropriate fees therefor, this matter be set down for an assessment of damages to include the threshold determination of whether plaintiff sustained a serious injury in the subject motor vehicle accident and proximate cause.

This shall constitute the decision and order of this court.

Dated: May 4, 2016

Howard H. Sherman