SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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AURIELLE COLEMAN,

Plaintiff,

- against -

MICHEL VASQUEZ, AMELIA CERDA, DORJE SHERPA and AMERICAN UNITED TRANSPORTATION INC.,

Defendants.

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DECISION AND ORDER

Index No. 31322/2017E

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that took place on April 28, 2017. At the time of the accident, plaintiff was the passenger in a vehicle operated by defendant Dorje Sherpa and owned by defendant American United Transportation Inc (Sherpa defendants). Defendant Sherpa was driving on the Cross Bronx Expressway on the exit ramp to Jerome Avenue when without warning, a vehicle operated by Michel Vasquez and owned by defendant Amelia Cerda (Vasquez defendants) struck defendant Sherpa's vehicle in the rear, causing plaintiff injuries. Defendants Sherpa and American United Transportation seek summary judgment on the ground that they are not liable for the accident. For the reasons that follow, defendants' motion for summary judgment is granted.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). The happening

of a rear-end collision is itself a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a "driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway" (*see Darmento v Pacific Molasses Co.,* 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

Here, the Sherpa defendants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). Those defendants submitted a copy of the pleadings, and defendant Sherpa's affidavit. Defendant Sherpa's affidavit sets forth sufficient details as to how the accident occurred, namely the Sherpa defendants' vehicle was traveling on the Cross Bronx Expressway with plaintiff's as a back-seat passenger when the Vasquez defendants' vehicle impacted the rear end of their vehicle without warning, causing the plaintiff's injuries.

In opposition, the Vasquez defendants failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Those defendants submitted the affidavit of defendant Vasquez stating that at the time of the accident defendant Sherpa had made a sudden stop causing the accident. Bald, conclusory allegations, even if believable, are not enough to withstand summary judgment (*see Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255 [1970]). The general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden

stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera*, *supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*see Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]). Because defendants Vasquez and Cerda failed to rebut the presumption of their negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), the motion for summary judgment is granted.

Accordingly, it is

ORDERED, that the Sherpa defendants' motion for summary judgment is granted and the complaint as against defendants Sherpa and American United Transportation is dismissed; and its further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendants Dorje Sherpa and American United Transportation dismissing the complaint against him.

This constitutes the decision and order of the court.

Dated: December 3, 2018

John R. Higgitt, A.J.S.C.