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

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CHRISTIAN CURIEL,

Plaintiff,

- against -

ANTONIO INCARDONA and THERESA INCARDONA,

Defendants.

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DECISION AND ORDER

Index No. 36214/2017E

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that occurred on August 21, 2017. Plaintiff had been slowing down due to traffic when, without warning, the vehicle operated by defendant Antonio Incardona and owned by defendant Theresa Incardona struck the rear of plaintiff's vehicle. Plaintiff seeks summary judgment on the issue of defendants' liability. For the reasons that follow, plaintiff's motion 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]). A rear-end collision constitutes 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.*).

Plaintiff satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings, her affidavit, and an uncertified police report. Plaintiff averred that he was slowing down due to traffic when defendants' vehicle struck the rear of plaintiff's vehicle. Additionally, while the police report is not in admissible form (*see Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]), defendant Antonio Incardona's statement therein that he briefly looked in his rearview mirror and then collided with plaintiff's vehicle is admissible as a party admission (*see Niyazov v Bradford*, 13 AD3d 501 [2nd Dept 2004]).

In opposition, defendants failed to raise a triable issue of material fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants challenge the admissibility of the accident report and plaintiff's affidavit. An affidavit by a person having knowledge of the facts is admissible evidence for summary judgement (*see Viviane Etienne Med. Care v Country-Wide Ins. Co.*, 25 NY3d 498 [2015]). Even assuming, arguendo, that the accident report is not admissible, plaintiff's unrefuted affidavit was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Defendants further argue that plaintiff's motion should be denied as premature because no discovery has been conducted. However, plaintiff's motion is not premature because "the information as to why [defendants' vehicle] struck the rear end of plaintiff's vehicle reasonably

rests within defendant driver's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda*, *supra*; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Because defendants failed to rebut the presumption of their negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), plaintiff's motion is granted.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defense of comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of the liability of defendants for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: December 31, 2018

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