NEW YORK SUPREME COURT – COUNTY OF BRONX

Mtn. Seq. # 01

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

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TORRES, JR., RICHARD DAMIAN Index №. **27671/2018E**

- against - Hon. **JOHN R. HIGGITT**,

WILLIAMS, JR., ANGELO, et ano. A.J.S.C.

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The following papers numbered **6** to **17** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **November 13, 2018** and duly submitted as No. **79** on the Motion Calendar of **November 13, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	6-10
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	11
Replying Affidavit and Exhibits	12-17
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the accident is granted, in accordance with the annexed decision and order.

Dated: **12/26/2018**

Hon. _____
JOHN R. HIGGITT, A.J.S.C.

Check one:
□ Case Disposed in Entirety
■ Case Still Active

Motion is:
■ Granted □ GIP
□ Denied □ Other

Check if appropriate:
□ Schedule Appearance □ Settle Order
□ Fiduciary Appointment □ Submit Order
□ Referee Appointment

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

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RICHARD DAMIAN TORRES, JR.,

Plaintiff,

- against -

ANGELO WILLIAMS, JR. and JERRY WILLIAMS,

Defendants.

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DECISION AND ORDER

Index No. 27671/2018E

John R. Higgitt, J.

This negligence action arises out of a rear-end collision that occurred at the intersection of East 173rd Street and Boston Road in the Bronx on June 2, 2017. Plaintiff seeks partial summary judgment on the issue of defendants' liability.

The motion is determined as follows:

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). CPLR 3212(b) requires the court to determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit" (*id.*). The evidence submitted by the movant must be viewed in the light most favorable to the non-movant (*see Jacobsen v N.Y. City Health & Hosps. Corp.*, 22 NY3d 824 [2014]; *see also Torres v Jones*, 26 NY3d 742 [2016]; *Andre v Pomeroy*, 35 NY2d 361 [1974]). Summary judgment should be granted only where there are no issues of material fact, dictating that the court direct judgment in favor of the movant as a matter of law (*see Friends of Animals, Inc. v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]). Once the movant makes a prima facie showing,

the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact warranting denial of the motion (*see Alvarez v Prospect Hosp.*, supra; *Zuckerman v City of New York*, supra).

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, non-negligent explanation for the accident" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]; *see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Agramonte v City of New York*, 288 AD2d 75 [1st Dept 2001]). Furthermore, "Vehicle and Traffic Law § 1129 imposes a duty to be aware of traffic conditions, including vehicle stoppages" (*Corrigan v Porter Cab Corp.*, 101 AD3d 471, 472 [1st Dept 2012]).

Plaintiff submits a copy of the pleadings and his affidavit. Plaintiff avers that he was a passenger in a vehicle that was at a complete stop at a traffic light, when it was struck in the rear by a vehicle operated by defendant Angelo Williams, Jr. and owned by defendant Jerry Williams. As an "innocent" passenger, plaintiff satisfied his *prima facie* burden, establishing his entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]; *Matos v Sanchez*, supra; *Corrigan v Porter Cab Corp.*, supra).

Defendants failed to submit an affidavit from the defendant Angelo Williams Jr. or any other proof in admissible form that would raise an issue as to whether defendants have a non-negligent explanation for the collision. Therefore, defendants failed to raise triable issue of material fact (*see Matos v Sanchez*, supra; *Corrigan v Porter Cab Corp.*, supra).

Parenthetically, a related negligence action brought by the driver of the vehicle in which plaintiff was a passenger is pending against the same defendants herein (*see Torres v Williams*,

Supreme Court, Bronx County, Index # 24950/2017E). In that case, Justice Donald Miles granted the plaintiff's motion for summary judgment on liability against the defendants. As such, the defendants herein are collaterally estopped from challenging their negligence (*see Lapierre v Love* 100 AD3d 713 [2nd Dept 2012]; *Pimental v Vasquez-Diaz,* __ Misc 3d ___, 2013 NY Slip Op 33993[U] [Sup Ct, Bronx County 2013]).[1]

For the foregoing reasons, it is hereby

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

The parties are reminded of the March 1, 2019 preliminary conference before the undersigned.

This constitutes the decision and order of the court.

Dated: December 26, 2018

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

[1] For an issue to be precluded by collateral estoppel, the parties to the two proceedings need not be absolutely identical (*see American Home Assur. Co. v Cathedral Fourth Dev. Corp.*, 11 Misc 3d 1072[A], 2006 NY Slip Op 50524[U] [Sup Ct, Nassau County 2006]). However, "[i]t is required that an issue in the present proceeding be identical to that necessarily decided in a prior proceeding, and that in the prior proceeding the party against whom preclusion is sought was accorded a full and fair opportunity to contest the issue" (*Allied Chemical v Niagara Mohawk Power Corp.*, 72 NY2d 271, 276 [1988], *cert denied* 488 US 1005 [1989]).