SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **IAS MOTION 22**

Justice

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YEHUDA PERRY,

Plaintiff,

- v -

DAVID GULYAN, MARY CUNNINGHAM

Defendant.

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INDEX NO. 159359/2018

MOTION DATE 04/05/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is for ORDERED that plaintiff's motion for summary judgment, pursuant to CPLR 3212, on the issue of liability against defendants; to dismiss defendants' affirmative defenses alleging comparative fault, "emergency doctrine," and "seat belt" defense; and to set this action for a trial as to damages only is granted.

Plaintiff Yehuda Perry's motion, which contends that on October 10, 2017, he was operating a motor vehicle and stopped at a red light on Central Park West at its intersection with West 69th Street in the County, City, and State of New York, when it was struck from behind by a vehicle operated by defendant David Guylan and owned by defendant Mary L. Cunningham has made out a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557, 560 (1980).

"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" (*Winegrad v New York University Medical Center*, 64

NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure … to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

"A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident" (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep't 2017]). Summary judgment in favor of the plaintiff is warranted where the defendant's own conduct inculpates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]).

Here, it is undisputed that plaintiff's stopped vehicle was struck in the rear by defendants' vehicle. Plaintiff attaches his affirmation in support of this assertion (Mot, Exh B). Plaintiff testified at the time of the accident he was wearing a seat belt and stopped at the red light for approximately 5 seconds when defendants vehicle struck his vehicle in the rear (*id.*). Plaintiff further attaches the police report of the underlying incident which contains defendant Gulyan's statement against interest that he struck plaintiff in the rear and "that he only closed his eyes for a second" (Exh A). Thus, plaintiff has made a prima facie showing of entitlement to summary judgment on the issue of liability and the burden shifts to defendants to raise an issue of fact or non-negligent explanation for the accident.

In opposition, defendants claim that there is a non-negligent excuse for the collision at issue. Defendants aver that plaintiff's vehicle suddenly stopped and was the cause for the accident. The Court notes that the law is clear that a claim that the vehicle in front stopped suddenly, standing alone, is insufficient to raise a triable issue of fact (*Cruz v Lise,* 123 AD3d

514 [1st Dept 2014]). Thus, defendants' argument that the affidavit does not make a prima facie showing of negligence is devoid of merit. Defendants have failed to raise an issue of fact and/or provide a non-negligent explanation for the incident.

Defendants further allege that plaintiff's motion is premature as depositions have yet to be held. Defendants' assertion that the instant case is premature for summary judgment, the Court has continuously held that summary judgment is permissible notwithstanding the fact that depositions have yet to be held (*Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dep't 2010]; *see also Rosario v Vasquez* 93 AD3d 509 [1st Dep't 2012]). Plaintiff's motion on the issue of liability as against defendants and to dismiss defendant's affirmative defenses alleging comparative fault, "emergency doctrine," and "seat belt" defense and to set this action for a trial as to damages only is granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on the issue of is granted; and it is further

ORDERED that the branch of plaintiff's motion to dismiss defendants' affirmative defenses alleging comparative fault, "emergency doctrine," and "seat belt" defense is granted; and it is further

ORDERED that an immediate trial as to the amount of damages to which plaintiff is entitled shall be had before the Court; and it is further

ORDERED that plaintiff shall, within 20 days from entry of this Order, serve a copy of this Oder with notice of entry upon counsel for all parties hereto and upon the Clerk of the Trial Support Office (Room 158) and shall serve and file with said Clerk a Note of Issue and statement

of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

This constitutes the Decision/Order of the Court.

9/10/2019
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	☐ DENIED		GRANTED IN PART	☐	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐	REFERENCE