SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 30 SUFFOLK COUNTY

PRESENT:
HON. DAVID T. REILLY, JSC

INDEX NO.: 609540-2019

---x

CAROLYN B. CLIFFORD,

Plaintiff,

-against-

ILDIKO GUCCIARDO and JEFFREY GUCCIARDO,

Defendants.

---x

The Harrison Law Group, P.C.
Attorneys for Plaintiff
445 Broad Hollow Road, Suite 400
Melville, NY 11747

Gentile & Tambasco
Attorneys for Defendants
115 Broad Hollow Road, Suite 300
Melville, NY 11747

MOTION DATE:	09/10/19
SUBMITTED:	09/11/19
MOTION SEQ. NO.:	1
MOTION:	MG

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by Plaintiff dated August 19, 2019 and supporting papers; (2) Defendant's Affirmation in Opposition e-filed on August 19, 2019; and (3) Plaintiff's Reply Affirmation dated August 20, 2019 (~~and after hearing counsel in support and in opposition to the motion~~) it is,

ORDERED that plaintiff's motion seeking an Order granting her partial summary judgment as to the issue of liability pursuant to Civil Practice Law and Rules (CPLR) §3212 is granted.

Plaintiff commenced this action seeking money damages for personal injuries allegedly sustained in a motor vehicle accident which occurred on November 15, 2017 at approximately 4:05 p.m. on County Road 97 at or near its intersection with Horse Block Place in the Town of Brookhaven, Suffolk County. According to the plaintiff, she was operating her vehicle in the northbound lane of County Road 97 and had come to a complete stop approximately 300 feet north of Horse Block Place. Plaintiff avers that after she stopped her vehicle she was struck in the rear by a vehicle, owned by defendant Jeffrey Gucciardo and driven by defendant Ildiko Gucciardo. The collision allegedly caused the plaintiff to suffer serious personal injuries.

Plaintiff now seeks an Order granting her summary judgment as to the issue of liability. She submits, among other things, a copy of the pleadings, her own affidavit in support and a copy of a MV-104A police accident report. Defendants have submitted opposition to the motion, consisting only of an affirmation by counsel, wherein they claim that the plaintiff's motion is premature as they

have not yet had the opportunity to depose the plaintiff.

It is beyond cavil that the party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material fact (*see* ***Alvarez v. Prospect Hosp.***, 68 NY2d 320 [1986]; ***Zuckerman v. City of New York***, 49 NY2d 557 [1980]). The failure to make such a *prima facie* showing requires the denial of the motion regardless of the sufficiency of the opposing papers (***see Winegrad v. New York Univ. Med. Ctr.***, 64 NY2d 851 [1985]). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" ***(Alvarez v. Prospect Hosp.***, *supra.*, *citing* ***Zuckerman v. City of New York***, *supra.*).

The law is also well-established that summary judgment is a drastic remedy to be granted only when there is clearly no genuine issue of fact to be presented at trial (*see* ***Andre v. Pomeroy,*** 35 NY2d 361 [1974]; ***Benincasa v. Garrubo,*** 141 AD2d 636 [1988]). The function of the court in determining a motion for summary judgment is issue finding, not issue determination (***Pantote Big Alpha Foods, Inc. v. Schefman,*** 121 AD2d 295 [1986]). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (***Robinson v. Strong Memorial Hospital,*** 98 AD2d 976 [1983]).

When a driver approaches another vehicle from the rear, he or she is bound to maintain a reasonably safe rate of speed, to maintain control of his or her vehicle, and to use reasonable care to avoid colliding with the other vehicle (*see* ***Martinez v. Martinez***, 93 AD3d 767[2012]. Thus, the occurrence of a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence on the part of the operator of the following vehicle and imposes a duty on that operator to come forward with a non-negligent explanation for the collision (*see* ***Giangrasso v. Callahan***, 87 AD3d 521 [2011]. This burden is placed on the driver of the offending vehicle, as he or she is in the best position to explain whether the collision was due to a mechanical failure, a sudden stop of the vehicle ahead, unavoidable skidding on wet pavement, or some other reasonable cause (*see* ***Abbott v. Picture Cars E., Inc.***, 78 AD3d 869 [2010]).

Here, plaintiff's submissions are sufficient to make a *prima facie* showing of entitlement to summary judgment on the issue of liability (*see* ***Kastritsios v Marcello***, 84 AD3d 1174 [2011]; ***Bernier v Torres***, 79 AD3d 776 [2010]). The burden, then, shifted to defendants to offer a non-negligent explanation for the accident sufficient to raise a triable issue of fact (*see* ***Emil Norsic & Son, Inc. v L.P. Transp., Inc.***, 30 AD3d 368 [2006]).

The Court finds that the mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion (***Kimyagarov v. Nixon Taxi Corp.***, 45 AD3d 736 [2007]). The Court has also examined the defendants' remaining contentions and finds them to be without merit.

Accordingly, the plaintiff's motion is granted.

This shall constitute the decision and Order of the Court.

Dated: **November 21, 2019**
Riverhead, New York

DAVID T. REILLY
JUSTICE OF THE SUPREME COURT

_____ FINAL DISPOSITION ___X___ NON-FINAL DISPOSITION