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

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GUILLERMO MEJIA,

Plaintiff,

- against -

NISSAN-INFINITI LT, PEPE INFINITI INC, JOHNNIE CUTTS JR, DOUGLAS A. ENGLISH and GERRY T. HICKMAN,

Defendants.

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DECISION AND ORDER

Index No. 30612/2017E

John R. Higgitt, J.

The parties' motions for summary judgment (Motion Sequences #2 and #3) are consolidated for decision herein, as they involve common questions of law and fact.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a multi-motor vehicle accident that occurred on December 20, 2016. At the time of the accident, the vehicles were traveling near the intersection on 125 Street and 5th Avenue in New York County. The vehicle operated by defendant Hickman and owned by defendant English ("the Hickman defendants") was stopped near the intersection when they were struck in the rear by plaintiff's vehicle; plaintiff's vehicle had been struck by the vehicle owned by Pepe Infiniti Inc. and operated by defendant Cutts ("the Cutts defendants"), and that collision propelled plaintiff's vehicle into the Hickman defendants' vehicle. The Hickman defendants seek summary judgment dismissing the complaint as against them on the ground that they are not liable for the accident (Motion Sequence no. 2). Plaintiff seeks summary judgment as against the Cutts defendants on the issue of liability for causing the subject motor vehicle accident (Motion Sequence no. 3). For the reasons that follow, the Hickman defendants' motion and plaintiff's motion are 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 of 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

The Hickman defendants satisfied their prima facie burden, establishing their entitlement to judgment as a matter of law (*see* CPLR 3212[b]). The Hickman defendants submitted a copy of the pleadings, a certified police report and defendant Hickman's affidavit. Defendant Hickman averred that at the time of the accident he was stopped at a red light when he felt an impact in the rear of his vehicle by plaintiff's vehicle.

In opposition, the Cutts defendants failed to raise a triable issue of fact as to the Hickman defendants' negligence (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The Cutts defendants argue that there is a question of fact as to how the accident occurred. Defendant Cutts averred that at the time of the accident the Hickman defendants' vehicle was not the first vehicle in the collision, but instead the second vehicle. He further avers that the Hickman defendants' vehicle did not stop at a red traffic light, but instead stopped in front of the Cutts defendants' vehicle without reason or warning. Because the affidavit of defendant Cutts contradicts the statement made by defendant Cutts to the police officer responding to the accident regarding the sequence of the vehicles, it is insufficient to raise a triable issue of fact (*see Fields v Lambert Houses Redevelopment Corp.*, 105 AD3d 668 [1st Dept 2013]).

In any event, regardless of the sequence of the vehicles, defendant Cutts has failed to provide a non-negligent explanation for the accident or raise an issue of fact as to the Hickman defendants' negligence. 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 v Rodriguez,* 72 AD3d 553 [1st Dept 2010]), "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]).

The Cutts defendants further argue that the Hickman defendants motion should be denied as premature because no discovery has been conducted. However, the motion is not premature because "the information as to why [the Cutts defendants' vehicle] struck the rear end of the other party[s]' car reasonably rests within defendant [Cutts] 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 the opposition failed to rebut the presumption of the Cutts defendants' negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), the Hickman defendants' motion for summary judgment is granted.

As to plaintiff's motion for summary judgment, plaintiff satisfied his prima facie burden, establishing his entitlement to judgment as a matter of law (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings and an affidavit. Plaintiff avers that he was stopped due to traffic ahead when his vehicle was struck in the rear by the Cutts defendants' vehicle.

In opposition, the Cutts defendants failed raise a triable issue of fact as to plaintiff's negligence (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The Cutts defendants argue that if the accident took place as stated in the certified police report they are not liable for the accident because plaintiff made a sudden stop causing the accident. However, as discussed above, 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, supra)*

Accordingly, it is

ORDERED, that the Hickman defendants' motion for summary judgment is granted and the complaint as against them and the cross claims against them are dismissed; and its further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Douglas A. English and Gerry T. Hickman, dismissing the complaint as against them and all cross claims against them; and it is further

ORDERED, that plaintiff's motion for summary judgment om the issue of the liability of defendants Pepe Infiniti Inc. and Johnnie Cutts Jr. is granted.

This constitutes the decision and order of the court.

Dated: January 2, 2019

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