Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS** IAS PART 30
Justice

----------X Index No.: 703299/2019

TIMOTHY KEEGAN,

Plaintiff,

Motion
Date: August 14, 2019

-against-

Motion Cal. No.: 22

GEORGE I. BOND and LYFT, INC.,

Motion Sequence No.: 1

Defendants.

----------X

The following efile papers numbered 15-20, 25-28 submitted and considered on this motion by plaintiff Timothy Keegan seeking an Order pursuant to Civil Practice Law and Rules ("CPLR") 3212 granting summary judgment on the issue of liability.

	Papers Numbered
Notice of Motion-Affidavits-Exhibits.....	EF 15-20
Affirmation in Opposition-Affidavits-Exhibits.....	EF 25-27
Reply Affirmation-Affidavits-Exhibits.....	EF 28

This litigation arises from an alleged motor vehicle accident which occurred on December 12, 2018 on the Long Island Expressway near Exit 19 in Queens, New York. Plaintiff Timothy Keegan claimed that he was a rear passenger of a car operated by defendant George I. Bond and owned by defendant Lyft, Inc. which came into contact with a non-party vehicle. Plaintiff claimed that he sustained serious injuries as a result of the accident and commenced this case against defendants with the filing of a summons and verified complaint on February 25, 2019. Defendants joined issue with the service of their verified answer on May 10, 2019.

Plaintiff attested in his affidavit that while he was a seat-belted passenger in the vehicle operated by defendant George I. Bond and owned by defendant Lyft, Inc., he was injured. He stated that on the date of the accident, defendants' vehicle was traveling in heavy, stop-and-go traffic when it struck the rear of the vehicle traveling in front of it. While it appeared that the defendant driver and the non-party vehicle driver exchanged information, he was not given a copy of the information and does not know the identity of the driver that defendant struck.

In opposition, defendants argued that the motion was premature because the motion was filed prior to a Preliminary Conference, there was a significant amount of discovery outstanding, and moreover, plaintiff failed to demonstrate his prima facie case. There are issues of fact as to liability. Defendant George I. Bond owned and operated a 2017 Chevrolet sedan which was involved in the accident. There is an issue of fact as to whether defendants negligence was the proximate, sole or a contributing factor to the accident. Defendant George I. Bond submitted his affidavit stating that he was traveling westbound on the Long Island Expressway prior to the accident, in the left lane of travel for several minutes. He described the Long Island Expressway as a three lane highway. The weather was clear, road was dry and he had no visibility issue. Prior to the accident, he was slowing his vehicle for traffic in front of him when a white Toyota SUV entered his lane of travel and came to a sudden stop. This vehicle is not a party to the litigation. He attested that his vehicle was fully in the left lane of travel when the other vehicle entered his lane and suddenly stopped. His vehicle had no mechanical issues and he was not ticketed by the police. On the date of the accident, he was working as an independent contractor and logged onto the Lyft Inc.'s platform, transporting plaintiff pursuant to defendant Lyft Inc.'s terms of service, which was annexed to the papers. He was the sole owner and operator of the vehicle involved in the accident and defendant Lyft, Inc. did not have any ownership interest in the vehicle and did not operate it. He attested that he did not do anything with respect to the operation of his vehicle that caused or contributed to the occurrence as another vehicle in front of him changed lanes and then stopped short.

In response, plaintiff stated that although defendants claimed that the collision was caused by the non-party vehicle in front of him changing lanes and then suddenly stopping ahead of him, the Second Department has held in other cases that this was a non-negligent explanation (*see Reitz v Seagate Truck. Inc.*, 71 AD3d 975 [2d Dept 2010]), here defendant George I. Bond did not actually state that the lane change of the non-party vehicle was sudden or unanticipated.

It is well-settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law by tendering admissible evidence to eliminate any material issues of fact from the case. (*Winegrad v New York Univeristy Medical Center.* 64 NY2d 851 [1985].) On a motion for summary judgment, the party moving for summary judgment must establish the entitlement to judgment as a matter of law by tendering evidence in admissible form, eliminating any material triable issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985].) In determining a motion for summary judgment, evidence must be viewed in a light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party (*see Adams v Bruno*, 124 AD3d 566 [2d Dept 2015]). Summary judgment eliminates cases from the Court's trial calendar which can be properly resolved by the Court as a matter of law (*Andre v Pomeroy,* 35 NY2d 361 [1974]).

New York State Vehicle and Traffic Law section 1129(a) states the following:

> "Following Too Closely. The 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 vehicle and the traffic upon and the condition of the highway."

New York State Vehicle and Traffic Law section 1128(a) states the following in relevant part:

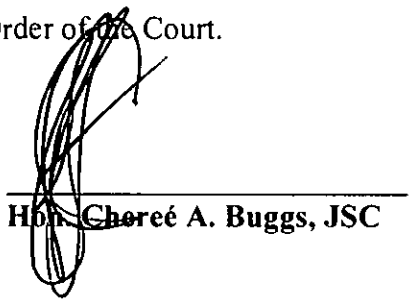
> "Driving on roadways laned for traffic. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

Based upon the evidence submitted herein, the Court finds that the plaintiff's motion is premature. Even assuming plaintiff had established his entitlement to judgment as a matter of law, viewing the evidence in the light most favorable to the non-moving party, defendant driver's affidavit was sufficient to demonstrate a possible a non-negligent explanation for the accident, and defendant Lyft, Inc. demonstrated that based upon the contract between defendants it may not be a proper party to the case. While "[v]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead" (*Le Grand v Silberstein*, 123 AD3d 773 [2d Dept 2014]; *see also Pierre v Demoura*, 148 AD3d 736 [2d Dept 2017]; *Schmertzler v Lease Plan U.S.A., Inc.*, 137 AD3d 1101 [2d Dept 2016]; *Robayo v Aghaabdul*, 109 AD3d 892 [2d Dept 2013]; *Jumandeo v Franks*, 56 AD3d 614 [2d Dept 2008]), here, the Court finds that defendant driver demonstrated in his affidavit that the non-party vehicle first made an unsafe lane change in front of him in violation of Vehicle and Traffic Law §1128(a), and then stopped short, and his response to same may be considered reasonable under the emergency doctrine (*see Leonard v Pomarico*, 137 AD3d 1085 [2d Dept 2016]). Plaintiff attested that he does not have a copy of the police accident report and does not have any information for the non-party driver. Under the facts and circumstances presented in these papers, the parties should engage in the discovery process, therefore the motion is denied as premature (*see* CPLR 3212(f); *Brielmeier v Leal*, 145 AD3d 753 [2d Dept 2016]; *Dushnick v Bellamy*, 119 AD3d 730 [2d Dept 2014]; *TD Bank. N.A. v 126 Spruce Street, LLC*, 117 AD3d 716 [2d Dept 2014]; *Aurora Loan Servs., LLC v LaMattina & Assocs.*, 59 AD3d 578 [2d Dept 2009]; *Juseinoski v New York Hosp. Med. Ctr of Queens*, 29 AD3d 636 [2d Dept 2006]).

Therefore, plaintiff's motion is denied without prejudice to renew after the completion of discovery.

The foregoing constitutes the decision and Order of the Court.

Dated: September 3, 2019



Hon. Chereé A. Buggs, JSC