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

----------X

RHONA LOWE,

Plaintiff,

- against -

OL FERNANDEZ-ORTEGA and FIRST BROOKLYN SUPPLY INC.,

Defendants.

----------X

DECISION AND ORDER

Index No. 32898/2018E

John R. Higgitt, J.

Upon plaintiff's August 2, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' April 14, 2019 affirmation in opposition and the exhibit submitted therewith; plaintiff's August 15, 2019 affirmation in reply and the exhibit submitted therewith; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the accident is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on April 18, 2018. In support of her motion, plaintiff submitted the pleadings, and the transcripts of the parties' deposition testimony. Plaintiff averred that at the time of the accident, she was stopped at a red traffic signal for about 15 seconds when her vehicle was suddenly struck in the rear by defendants' vehicle.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent 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 against the rearmost driver in a chain confronted with a stopped or stopping the 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 (*see id.*).

Plaintiff made a prima facie showing that defendants violated Vehicle and Traffic Law § 1129 and that such violation was a proximate cause of her injuries.

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law on the issue of defendants' liability, defendants failed to raise a triable issue of fact. Defendants assert that the motion should be denied because plaintiff failed to submit admissible evidence to support her motion, asserting that the deposition transcripts of the parties' testimony was not admissible because they were not signed by parties. However, plaintiff's unsigned deposition transcript is admissible and sufficient to support plaintiff's motion for summary judgment (*see* CPLR 3116[a]; *Franco v Rolling Frito-Lay Sales, Ltd.*, 103 AD3d 543 [1st Dept 2013]). Furthermore, defendant Fernandez-Ortega's deposition transcript is admissible because plaintiff sent a copy of the transcript to him, and he failed to sign the transcript within sixty days (*see* CPLR 3116[a]).

Defendants also assert that there is a question of fact as to how the accident occurred. Specifically, defendants assert that there is a question of fact as to the speed of defendants'

vehicle and the severity of the collision between the vehicles. However, defendant Fernandez-Ortega's averment does not raise a triable issue of fact because "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). Moreover, the severity of the collision relates to plaintiff's injuries, not defendant's liability.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defense of comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]).

Accordingly, it is

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

The parties are reminded of the November 15, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 10, 2019

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