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

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EARNELL KIRKLAND,

Plaintiff,

- against -

RASHAUD D. MILLER, WILLIS OF NEW YORK, INC., MTLR CORP., TNE CHEFS' WAREHOUSE LEASING, CO., J1C, and TCE LEASING CO., LLC,

Defendants.

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DECISION AND ORDER

Index No. 34483/2018E

John R. Higgitt, J.

Upon plaintiff's June 5, 2019 notice of motion and the affirmation, and exhibit submitted in support thereof; defendants' July 23, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's August 1, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject accident and for dismissal of defendants' first affirmative defense alleging plaintiff's culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on March 21, 2018. In support of his motion, plaintiff submits the pleadings, the police accident report, and his affidavit. Plaintiff averred that he was stopped due to a red traffic light when his vehicle was suddenly struck 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.*).

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 submit the affidavit of defendant Miller, who averred that he was traveling behind plaintiff's vehicle when plaintiff, without warning, made a sudden stop. Defendant Miller further averred it was showing at the time of the accident and that the road was covered with snow. Defendant Miller stated that he was unable to stop his vehicle in time to avoid the collision.

Generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, 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]). Additionally, "[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]). Given that the prevailing weather conditions at the time of the accident (of which defendant Miller was aware) and that the accident occurred on a local New York City roadway, defendant Miller's affidavit failed to explain why he did not keep a reasonably safe distance from plaintiff's vehicle.

Defendants further assert that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the defendant[s'] vehicle struck the rear end of plaintiff's car reasonably rests within defendant driver's 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]). As discussed above, defendant Miller's explanation regarding how the accident occurred does not afford defendants a non-negligence explanation, and defendants have not demonstrated that discovery would yield evidence relevant to the issues of whether defendant Miller has a non-negligent explanation for the accident and whether defendants' negligence was a proximate cause of plaintiff's injuries.

As to the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing that he bears no such fault (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendants failed to raise a triable issue of fact, the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault is granted.

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking the dismissal of defendants' first affirmative defense is granted and that defense is dismissed.

The parties are reminded of the October 18, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 3, 2019

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