| **Delacruz v Ruiz** |
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| 2019 NY Slip Op 35035(U) |
| October 28, 2019 |
| Supreme Court, Bronx County |
| Docket Number: Index No. 23450/2019E |
| Judge: John R. Higgitt |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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JENNIFER DELACRUZ,

Plaintiff,

- against -

MARIA RUIZ and LUIS LOPEZ GARCIA,

Defendants.

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DECISION AND ORDER

Index No. 23450/2019E

John R. Higgitt, J.

Upon plaintiff's August 13, 2019 notice of motion and the affirmation and exhibits submitted in support thereof; defendants' September 5, 2019 affirmation in opposition; plaintiff's September 13, 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 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 November 30, 2018. In support of her motion, plaintiff submitted the pleadings, the police accident report, and her affidavit. Plaintiff averred that at the time of the accident she was a passenger in a non-party driver's vehicle when defendants' vehicle struck the rear of the vehicle occupied by plaintiff.

"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 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 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 the accident.

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, defendants failed to raise a triable issue of fact as to their liability. The affirmation of counsel alone is not sufficient to rebut plaintiff's prima facie showing of entitlement to summary judgment. In addition, bald, conclusory allegations, even if believable, are not enough to withstand summary judgment (*see Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255 [1970]).

Defendants argue that the motion should be denied because plaintiff failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party is competent evidence and may be sufficient to discharge the interested party's summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]).

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 driver'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]). Notably, defendants did not provide an affidavit from defendant driver in connection with this motion, and no reason was given for their failure to do so.

Defendants also assert that the motion should be denied because the non-party driver of the vehicle occupied by plaintiff made a sudden stop, causing the subject accident. 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]). The principle that a claim of a sudden stop by the rear-ended vehicle is insufficient to constitute a non-negligent explanation for a hit-in-the-rear accident has

particular force when the accident occurs on a local public roadway in the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]).

Thus, because plaintiff made a prima facie showing of entitlement to judgment as a matter of law, and defendants failed to raise a triable issue of fact as to their liability, plaintiff's motion for summary judgment as against defendants is granted.

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 [2nd 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 28, 2019

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