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

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LUIS MARMOL CONTRERAS,

Plaintiff,

- against -

GUILLAUME CHARRIER, JOHN R. ELLIOT, WILLIAM LOPEZ and JESSE SHAPIRO & JAMES GLASS CO,

Defendants.

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DECISION AND ORDER

Index No. 22031/2019E

John R. Higgitt, J.

Upon the July 15, 2019 notice of motion of defendants Charrier and Elliot ("the Charrier defendants") and the affirmation, affidavits and exhibits submitted in support thereof; the July 23, 2019 affirmation in limited opposition of defendants William Lopez and Jess Shapiro & James Glass Co. ("the Lopez defendants"); and due deliberation, the Charrier defendants' motion for summary judgment dismissing the complaint as against them and all cross claims against them 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 October 26, 2018. The Charrier defendants seek summary judgment dismissing the complaint as against them and the cross claims against them on the ground that they are not liable for the accident. In support of their motion, the Charrier defendants submit the affidavits of defendants Charrier and Elliot, and the police accident report.[1]

[1] The Charrier defendants' failure to submit a complete set of the pleadings with their motion is, at worst, a technical omission that the court overlooks (*see* CPLR 2001). The pleadings were previously e-filed, and the Charrier defendants make references to the NYSCEF e-file document numbers as permitted under CPLR 2214(c).

Defendant Charrier averred that at the time of the accident he was a student driver with plaintiff as his driving instructor when he was suddenly cut off by a non-party driver, causing him to bring the vehicle to a sudden stop. Defendant Charrier further averred that after his vehicle stopped, the Lopez defendants' vehicle struck the rear of his vehicle.

Defendant Elliot averred that he is a principal of New York Commercial Driving School Corp. and that at the time of the accident plaintiff was working as a driving instructor, assisting defendant Charrier.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless [the rear driver] 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 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]). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]).

The Lopez defendants' opposition is limited to challenging the setting of a date for the assessment of damages, arguing that there is still damages-related discovery pending in the action. Because the action is still active as against the Lopez defendants, the assessment of damages will be deferred to trial.

The Charrier defendants made a prima facie showing that they are not liable for the accident as their vehicle was struck in the rear by the Lopez defendants' vehicle on a local public roadway. The non-moving parties did not oppose the aspect of the Charrier defendants' motion for summary judgment on the issue of their liability, and thus failed to raise a triable issue of fact in opposition.

Accordingly, it is

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

ORDERED, that the Clerk of the Court shall enter judgment in favor of the Charrier defendants' dismissing the complaint as against them and the cross claims against them; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **November 29, 2019.**

This constitutes the decision and order of the court.

Dated: October 15, 2019

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