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

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CHRISTOPHER NARANJO,

Plaintiff,

- against -

MARGUERITE CAMPBELL,

Defendant.

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DECISION AND ORDER

Index No. 22284/2019E

John R. Higgitt, J.

Upon plaintiff's July 30, 2019 notice of motion and the affirmation, affidavit and exhibit submitted therewith; defendant's August 23, 2019 affirmation in opposition; plaintiff's August 23, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and dismissal of defendant's 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 December 22, 2017. In support of his motion, plaintiff submits the pleadings, the police accident report, and his affidavit. Plaintiff averred that he was traveling southbound on the FDR Drive in the right lane when defendant's vehicle suddenly changed from the middle lane to the right lane, striking the driver's side of plaintiff's vehicle. Plaintiff also submits the police accident report that contains the following party admission by defendant: "she did attempt to enter the right lane… and collided into [plaintiff's] vehicle" (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]). Defendant offers token opposition to plaintiff's motion.

Vehicle and Traffic Law § 1128(a) states that 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 ascertained that such movement can be made with safety" (*see Delgado v Martinez Family Auto*, 113 AD3d 426 428 [1st Dept 2014]). A violation of Vehicle and Traffic Law § 1128(a) constitutes negligence per se (*see Flores v City of New York*, 66 AD3d 599 [1st Dept 2009]). A plaintiff demonstrates entitlement to partial summary judgment by showing that a defendant's vehicle entered plaintiff's lane of travel when it was not safe to do so (*see Sanchez v Oxcin*, 157 AD3d 561, 564 [1st Dept 2018]).

Plaintiff's evidence established, prima facie, that defendant failed to operate defendants' vehicle in a reasonably safe manner. Defendant's attempted traffic maneuver caused defendant's vehicle to sideswipe plaintiff's vehicle.

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, defendant failed to raise a triable issue of fact. 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]).

Defendant argues 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]). Moreover, as noted above, the police report contains a party admission by defendant supporting summary judgment in plaintiff's favor. Notably, defendant did not address her police-report admission in her opposition.

Defendant further asserts 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 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, defendant did not provide an affidavit in connection with this motion, and no reason was given for her failure to do so.

As to the aspect of plaintiff's motion seeking dismissal of defendant's affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing that he bears no such fault. Because defendant failed to raise a triable issue of fact, the aspect of plaintiff's motion seeking dismissal of defendant's 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 defendant's liability is granted; and it is further

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

The parties are reminded of the January 31, 2020 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.