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

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YALIZA MARTINEZ and MARIANELA VENTURA,

Plaintiffs,

- against -

DAVID ORTEGA-LIZARDI,

Defendant.

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DECISION AND ORDER

Index No. 21844/2019E

John R. Higgitt, J.

Upon plaintiffs' August 22, 2019 notice of motion and the affirmation, affidavits, and exhibits submitted in support thereof; plaintiff Martinez's September 10, 2019 notice of cross motion and the exhibits submitted in support thereof; defendant's September 20, 2019 affirmation in opposition; plaintiffs' September 25, 2019 affirmation in reply; and due deliberation; plaintiffs' motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and plaintiff Martinez's cross motion for summary judgment dismissing defendant's counterclaim against her are granted.

This is a negligence action to recover damages for personal injuries that plaintiffs allegedly sustained in a motor vehicle accident that took place on October 21, 2018. In support of their motion, plaintiffs submitted the pleadings, the police accident report and the affidavit of plaintiff Martinez. Plaintiff Martinez averred that they were traveling southbound on the Bronx River Parkway in Bronx County when her vehicle was rear-ended by defendant's vehicle.

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 (*see Johnson v Phillips,* 261 AD2d 269 [1st Dept 1999]). 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 plaintiffs' prima facie showing of entitlement to judgment as a matter of law on the issue of defendant's liability, defendant failed to raise a triable issue of fact. The affirmation of counsel alone is not sufficient to rebut plaintiffs' 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 asserts that the motion should be denied because plaintiffs' vehicle came to a sudden stop causing the accident. First, defendant offers no evidence supporting this sudden-stop theory. Second, under the facts of this matter, a purported sudden stop by plaintiffs' vehicle does not provide defendant with a non-negligent explanation for the 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]).

Given the foregoing, and given the presumption of non-negligence of the driver of the lead vehicle in a rear-end collision, plaintiff Martinez's cross motion for dismissal of defendant's counterclaim against him is granted (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]).

Accordingly, it is

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

ORDERED, that plaintiff Martinez's cross motion seeking summary judgment dismissing defendant's counterclaim as against him is granted, and defendant's counterclaim against plaintiff Martinez is dismissed; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **December 20, 2019.**

This constitutes the decision and order of the court.

Dated: November 4, 2019

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