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

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GUIPENG YANG,

Plaintiff,

- against -

MARIA CALDERON, ANNE BARROS and "JOHN DOE,"

Defendants.

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DECISION AND ORDER

Index No. 27084/2017E

John R. Higgitt, J.

Upon plaintiff's September 27, 2018 notice of motion and the affirmation and exhibits submitted in support thereof; defendant Calderon's November 8, 2018 affirmation in opposition; defendant Calderon's November 9, 2018 notice of cross motion and the affirmation and exhibits submitted in support thereof; the November 9, 2018 affirmation in partial opposition submitted by defendant Barros; plaintiff's November 26, 2018 affirmation in reply; the November 29, 2018 affirmation in opposition submitted by defendant Barros and the affidavit submitted therewith; and due deliberation; plaintiff's motion for partial summary judgment on the issue of the liability of defendant Calderon and dismissing the defendants' affirmative defenses of plaintiff's comparative fault is granted and defendant Calderon's cross motion for summary judgment is denied.

Plaintiff submits an affidavit in which he avers that his vehicle had been stopped for five seconds when it was rear-ended by the vehicle owned and operated by defendant Calderon. Plaintiff also submits a certified copy of the police accident report containing a statement by Calderon that she was unable to stop in time, and struck plaintiff's vehicle. Such statement is admissible as a party admission (*see Liburd v Lulgjuraj*, 156 AD3d 532 [1st Dept 2017]; *Pivetz v Brusco*, 145 AD3d 806 [2d Dept 2016]; *Penn v Kirsh*, 40 AD2d 814 [1st Dept 1972]; *Jackson v Trust*, 103 AD3d 851 [2d Dept 2013]; *see also Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]).

"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 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]). The happening of a rear-end collision is itself a prima facie case of negligence on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

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]). The sudden stop of the lead vehicle, without more (*see Cabrera*, *supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006] [citations omitted]).

Plaintiff's proof was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Defendant Calderon cross-moves for summary judgment, submitting an affidavit in which she avers that she stopped her vehicle because the vehicle in front of hers (plaintiff's) stopped suddenly. Defendant Calderon avers further that her vehicle was struck in the rear by the vehicle owned by defendant Barros, propelling defendant Calderon's vehicle into the rear of plaintiff's vehicle. Defendant Calderon's affidavit, however, contradicts her earlier admission contained in the police accident report, and is thus insufficient to raise an issue of fact (*see Colon v Vals Ocean Pac. Sea Food, Inc.*, 157 AD3d 462 [1st Dept 2018]). The court notes that defendant Calderon did not

address the prior admission in her opposition. Additionally, in opposition, defendant Barros submitted an affidavit in which she averred that defendant Calderon's vehicle had already struck plaintiff's vehicle when defendant Barros' vehicle struck defendant Calderon's vehicle, and that the impact between the Barros and Calderon vehicles did not propel the Calderon vehicle into plaintiff's vehicle.

Plaintiff also moves for dismissal of the defendants' affirmative defenses alleging plaintiff's culpable conduct. The foregoing proof established plaintiff's freedom from negligence (*see Perez v Steckler*, 157 AD3d 445 [1st Dept 2018]) and defendants failed to raise a triable issue of fact. Plaintiff is thus entitled to dismissal of so much of defendant Calderon's first affirmative defense as alleged plaintiff's culpable conduct and defendant Barros' first affirmative defense.

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of the liability of defendant Calderon and dismissing the defendants' affirmative defenses of plaintiff's comparative fault is granted; and it is further

ORDERED, that so much of defendant Calderon's first affirmative defense as alleged plaintiff's culpable conduct and defendant Barros' first affirmative defense are dismissed; and it is further

ORDERED, that defendant Calderon's cross motion for summary judgment is denied.

The parties are reminded of the February 22, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 18, 2019

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