SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

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HOLMES, EVANE

Index №. **24120/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

METELLUS, DAVID, et al

A.J.S.C.

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The following papers in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **August 1, 2019** and duly submitted as No. **47** on the Motion Calendar of **September 27, 2019**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	13-16
Notice of Cross-Motion – Exhibits and Affidavits Annexed	28-31
Answering Affidavit and Exhibits	17-20, 25-27, 34-35, 36-38
Replying Affidavit and Exhibits	22-23, 32-33, 39-40, 41
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of the liability of the defendants is granted in part, and the Williams defendants' cross motion for summary judgment is granted, in accordance with the annexed decision and order.

Dated: **10/02/2019**

Hon. _____
JOHN R. HIGGITT, A.J.S.C.

Check one:
□ Case Disposed in Entirety
■ Case Still Active

Motion is:
□ Granted ■ GIP
□ Denied □ Other

Check if appropriate:
□ Schedule Appearance
□ Fiduciary Appointment
□ Referee Appointment
□ Settle Order
□ Submit Order

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

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EVANE HOLMES,

Plaintiff,

- against -

DAVID METELLUS, RAMON WILLIAMS and BENJAMIN CORDRINGTON,

Defendants.

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DECISION AND ORDER

Index No. 24120/2018E

John R. Higgitt, J.

Upon plaintiff's July 11, 2019 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendant Metellus's July 25, 2019 affirmation in opposition and the exhibit submitted therewith; plaintiff's August 19, 2019 affirmation in reply; the September 20, 2019 notice of cross motion of defendants Williams and Cordrington ("the Williams defendants") and the affirmation and exhibit submitted in support thereof; the Williams defendants' September 20, 2019 affirmation in partial support and the exhibit submitted therewith; defendant Metellus's September 23, 2019 affirmation in reply; defendant Metellus's September 24, 2019 affirmation in opposition to the cross motion and the affidavit and exhibit submitted therewith; plaintiff's September 25, 2019 affirmation in opposition; defendant Metellus's September 25, 2019 affirmation in reply; the Williams defendants' September 26, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of the liability of the defendants is granted in part, and the Williams defendants' cross motion for summary judgment is granted.

Plaintiff, a passenger in the Williams defendants' vehicle, claims to have sustained personal injuries when the Williams defendants' vehicle was struck in the rear by the vehicle driven by defendant Metellus.

In support of her motion, plaintiff submits an uncertified copy of the police accident report and her affidavit.

In support of their cross motion, the Williams defendants submit the transcript of plaintiff's August 15, 2019 deposition testimony. They also rely on the proof submitted by plaintiff.

Plaintiff avers that she was a "belted passenger" in the vehicle driven by defendant Williams, which was struck in the rear by the vehicle driven by defendant Metellus, while the Williams defendants' vehicle was stopped at a red light. Plaintiff avers that she was looking straight ahead and had no notice of an impending accident. Plaintiff's deposition testimony was consistent with her affidavit.

The police accident report contains a statement, ostensibly attributable to defendant Metellus, that the accident occurred when he became "distracted" after moving when the light turned green. 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]; *Jackson v Trust*, 103 AD3d 851 [2d Dept 2013]; *Penn v Kirsh*, 40 AD2d 814 [1st Dept 1972]; *see also Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]).

Defendant Mettelus opposes the motion and cross motion. The Williams defendants oppose the motion insofar as it alternatively sought summary judgment against all defendants. Plaintiff does not oppose the cross motion.

In opposition, defendant Metellus submits his affidavit and an uncertified copy of his own accident report.[1] Defendant Metellus avers that after his and the Williams defendants'

[1] The report contains plaintiff's admission that his vehicle struck the vehicle in front of his; to the extent it is submitted for the purpose of the court's consideration of exculpatory statements contained therein, it is inadmissible. The report, however, is not the only evidence submitted in opposition and may therefore be considered.

vehicles started moving after the traffic signal turned green, the driver of the Williams defendants' vehicle suddenly and without warning applied his brakes and stopped, causing defendant Metellus's vehicle to strike the Williams defendants' vehicle. Defendant Metellus denies informing the responding police officer that he was distracted.

"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]). The fact that the lead vehicle is stopped when rear-ended is prima facie evidence that its driver was not negligent (*see Falcone v Dorius*, 160 AD3d 578 [1st Dept 2018]). Thus, the claim of the sudden stop of the lead vehicle, without more, is insufficient to overcome the dual presumptions of the negligence

of the rear driver and the non-negligence of the front driver (*see Giap v Hathi Son Pham*, 159 AD3d 484 [1st Dept 2018]).

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.*).

The presumption of the negligence of the rear driver has been applied where the vehicles have started to move from a stop at a traffic signal (*see e.g. Brown v Smalls*, 104 AD3d 459 [1st Dept 2013]; *Savarese v Cerrachio*, 79 AD3d 725 [2d Dept 2010]). Defendant Metellus's explanation "that the plaintiff proceeded once the traffic light turned green but then suddenly stopped, did not rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Ramirez v Konstanzer*, 61 AD3d 837, 837-38 [2d Dept 2009]; *see also Rodriguez v Budget Rent-A-Car Sys., Inc.*, 44 AD3d 216 [1st Dept 2007]). Thus, "[a]lthough [defendant Metellus's] version of the events leading to the subject rear-end collision differed from the [plaintiff's] version of events, the [defendant Metellus's] version of events, even if accepted as true, did not raise a triable issue of fact as to the existence of a nonnegligent explanation for the rear-end collision" (*Cajas-Romero v Ward*, 106 AD3d 850 [2d Dept 2013]).

Defendant Metellus has thus failed to rebut the presumption of his negligence and the presumption of the Williams defendants' non-negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]; *see also Buchanan v Keller*, 169 AD3d 989, 992 [2d Dept 2019] ["[defendant's] testimony [that plaintiff's vehicle stopped suddenly after moving from a stopped

position when the traffic signal turned green] amounted to a claim that the plaintiff's vehicle came to a sudden stop which, standing alone, was insufficient to rebut the presumption of negligence on the part of the defendants' vehicle"]; *Little v Morillo*, 168 AD3d 433 [1st Dept 2019]; *Vasquez v Chimborazo*, 155 AD3d 432 [1st Dept 2017]; *Torres v Kalmar*, 136 AD3d 457 [1st Dept 2016]), particularly because he averred that he was travelling "slowly" at the time of the accident. The court notes that the accident is alleged to have occurred on a local public roadway within the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]).

Defendant Metellus also opposes summary judgment as premature because issues as to the parties' respective negligence have not been explored through discovery. 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 v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]; *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]). "[Defendant Metellus], as the [rear] driver, has knowledge of how the accident occurred and did not show any need for discovery on that issue" (*Estate of Bachman v Hong*, 169 AD3d 436, 437 [1st Dept 2019]).

That discovery remains outstanding does not warrant the denial of the motion and cross motion, particularly where the opposition fails to indicate what discovery might be expected that would raise an issue of fact as to defendant Metellus's liability (*see Doherty v City of New York*, 16 AD3d 124 [1st Dept 2005]). The opposition "advanced no non-speculative basis to believe that additional discovery might yield evidence warranting a different disposition" (*Rosario v N.Y. City Transit Auth.*, 8 AD3d 147, 148 [1st Dept 2004]). Defendant Metellus's "mere expressions of hope" that disclosure might yield relevant information are insufficient to raise an issue of fact

(*Piccinich v New York Stock Exch.*, 257 AD2d 438, 439 [1st Dept 1999]; *see also A & E Stores, Inc. v U.S. Team, Inc.*, 63 AD3d 486, 486-87 [1st Dept 2009] ["speculation that useful information may be learned during discovery does not constitute grounds for denying the motion"]).

Summary judgment may not be avoided by the claimed need for discovery "unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence" (*Steinberg v Schnapp*, 73 AD3d 171, 177 [1st Dept 2010] [citation omitted]). Defendant Metellus is obligated to state what he believes will be uncovered (*see Perez v Brux Cab Corp.*, 251 AD2d 157 [1st Dept 1998]), and is "bound to show there is a likelihood of discovery leading to such evidence" (*Turner v ISR Solutions*, 8 Misc 3d 1027[A], 2005 NY Slip Op 51302[U], at *3 [App Term 1st Dept 2005]). Furthermore, "[a] party who claims ignorance of critical facts to defeat a motion for summary judgment must first demonstrate that the ignorance is unavoidable and that reasonable attempts were made to discover the facts which would give rise to a triable issue" (*Cruz v Otis El. Co.*, 238 AD2d 540, 540 [2d Dept 1997] [citations omitted]; *see also Hsing Hsung Chuang v Whitehouse Condominium*, 68 AD3d 559 [1st Dept 2009]). Defendant Metellus does not do so here.

To the extent plaintiff alternatively moved for summary judgment against all defendants on the ground that she was an "innocent passenger," she failed to establish the negligence of any defendant other than defendant Metellus as a matter of law (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]). As the *Oluwatayo* court observed, cases such as *Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206 [1st Dept 2001]), "stand[] only for the proposition that in motor vehicle negligence actions, an innocent plaintiff is entitled to a determination *that she [or he] had no culpable conduct on the issue of liability* irrespective of the unresolved issue of a

defendant driver's negligence" (*Oluwatayo*, 142 AD3d at 119 [emphasis added]). A passenger plaintiff is not relieved of the duty of affirmatively establishing the negligence of any defendant (*Guzman v Desantis*, 148 AD3d 580 [1st Dept 2017]).

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendant Metellus's affirmative defense(s) regarding plaintiff's culpable conduct (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]), or any relief with respect to plaintiff's claims of "serious injury."

Accordingly, it is

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

ORDERED, that plaintiff's motion is otherwise denied; and it is further

ORDERED, that the Williams defendants' cross motion for summary judgment is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of the Williams defendants dismissing the complaint as against them and all cross claims against them.

The remaining parties are reminded of the October 4, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 2, 2019

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