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| Williams v Cruzperdomo |
| 2020 NY Slip Op 30951(U) |
| April 14, 2020 |
| Supreme Court, New York County |
| Docket Number: 156333/18 |
| Judge: Adam Silvera |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

-----X

TIMOTHY WILLIAMS, JADA WILLIAMS, DANIEL
DERAVE, and TIFFANY DERAIVE,

Plaintiffs,

- v -

JUAN CRUZPERDOMO, ZELAYA & SONS TRANS,
LLC, ANGEL CURET, and NEW YORK CITY
HOUSING AUTHORITY,

Defendants.

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|---------------------------------------|------------|
| INDEX NO. | 156333/18 |
| MOTION DATE | 01/17/2020 |
| MOTION SEQ. NO. | 001 |
| DECISION + ORDER ON MOTION | |

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 49, 50, 53, 55, 56

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that defendant New York City Housing Authority's (hereinafter referred to as "defendant NYCHA") motion for summary judgment to dismiss this action and any and all cross-claims is granted.

Defendant NYCHA's motion for summary judgment argues that its vehicle was stopped when it was hit in the rear by defendants' Juan Cruzperdomo and Zelaya & Sons Trans, LLC's vehicle in this three car accident, such that he is not liable for any injuries plaintiff may have sustained in the accident. Here, it is uncontested that, on the date and time of the accident, plaintiff's vehicle was rear ended by defendant NYCHA's vehicle which was rear ended by defendants' Cruzperdomo and Zelaya & Son Trans, LLC's vehicle. Thus, defendant NYCHA has made out a prima facie case of negligence, and the burden shifts to plaintiff and co-defendants to raise a triable issue of fact. *See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). "[A] rear-end collision with a stopped or stopping vehicle establishes

a prima facie case of negligence on the part of the driver of the rear vehicle, ...[and] shift[s] the burden to [the non-moving party] to come forward with an adequate nonnegligent explanation for the accident”. *Cruz v Lise*, 123 AD3d 514 (1st Dep’t 2014)(internal quotations omitted).

The standards of summary judgment are well settled. To grant summary judgment, it must be clear that no material or triable issues of fact are presented. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case”. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]”. *Zuckerman v City of New York*, 49 NY2d 557, 560 (1980).

Here, plaintiff’s opposition does not oppose the instant motion. In fact, plaintiff proffers a stipulation of partial discontinuance which discontinues this action against defendant NYCHA. Such stipulation was signed only by defendant NYCHA and plaintiff. Co-defendants oppose defendant NYCHA’s motion, proffering only an attorney’s affirmation. “[A] bare affirmation of . . . [an] attorney who demonstrated no personal knowledge . . . is without evidentiary value and thus unavailing.” *Zuckerman v City of New York*, 49 NY2d 557, 563 (1980). Thus, defendants’ attorney’s conclusory and speculative affirmation, is insufficient to raise any factual issues to warrant a denial of the within motion. *See GTF Marketing Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 (1985).

Moreover, co-defendants' arguments, that defendant NYCHA's stopped vehicle was stopped too close to plaintiff's stopped vehicle and that defendant NYCHA failed to state whether its vehicle stopped abruptly and for how long its vehicle was stopped prior to being rear-ended by co-defendants, are unavailing. It is undisputed that plaintiff's vehicle was stopped and that defendant NYCHA's vehicle was stopped behind plaintiff's vehicle prior to co-defendants' vehicle impacting the rear of defendant NYCHA's vehicle and propelling it forward into the rear of plaintiff's vehicle. It is further undisputed that co-defendants' testified that the driver of their 48 foot tractor, which was carrying 18,000 pounds of cargo, was distracted while attempting to change lanes and rear-ended defendant NYCHA's vehicle. Thus, no issues of fact have been raised to oppose defendant NYCHA's motion for summary judgment to dismiss the instant action and the cross-claims against it. Furthermore, the instant action has now been settled between plaintiff and co-defendants Cruzperdomo and Zelaya & Sons Trans, LLC, and discontinued against such parties, such that the only remaining parties are plaintiff and defendant NYCHA. Plaintiff has not opposed the instant motion, and even proffers a partially executed stipulation of discontinuance against defendant NYCHA. As such, no triable issues of fact have been raised, and defendant NYCHA's motion for summary judgment is granted and this action and any and all cross-claims is dismissed against it.

Accordingly, it is

ORDERED that defendant New York City Housing Authority's motion for summary judgment to dismiss this action and any and all cross-claims against it is granted and this action and any any all cross-claims is dismissed as to defendant NYCHA; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant NYCHA dismissing the claims and cross-claims made against it in this action, together with costs and

disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs,; and it is further

ORDERED that within 45 days of entry, defendant NYCHA shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/14/2020

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE