NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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R.K., an infant by his mother and natural guardian JEONG RI KIM, and JEONG RI KIM, individually,

Plaintiffs,

- against -

CRISTIAN A. VASQUEZ, RAFIK I. ELNADOURI, JULIO E. VIJAY ZARUMA and VERONICA M. AMADOR GONZALES,

Defendants.

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Index No.: 701910/2019

Motion Date: 1/28/2020

Motion Seq. No: 1

The following papers 1-9 read on this motion by defendants Julio E. Vijay Zaruma and Veronica M. Amador Gonzales (hereinafter together "the Zaruma defendants") for an order granting summary judgment.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibits-Service.....	5 - 7
Reply Affirmation-Service	8 - 9

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for personal injuries allegedly sustained by the plaintiffs on December 15, 2018 when the parties were involved in a three vehicle chain collision motor vehicle accident that occurred on Roosevelt Avenue in the County of Queens, New York. This action was commenced on February 1, 2019 by the filing of a summons and complaint.

The Zaruma defendants move this Court, pursuant to CPLR §3212, for an order granting dismissal of plaintiffs' complaint and all cross claims against them on the grounds that no triable issues of fact exist. It is alleged that while stopped at a traffic light, the vehicle operated by co-defendant Cristian A. Vasquez and owned by co-defendant Veronica M. Amador Gonzales (hereinafter together "the Vasquez defendants"), rear-ended movants' vehicle, which subsequently rear-ended the plaintiffs' vehicle.

CPLR §3212(b) requires that for a court to grant summary judgment, the court must determine if the movants' papers justify holding as a matter of law, that the cause of action or defense has no merit. The evidence submitted in support of the movant must be viewed in the light most favorable to the non-movant (*see Grivas v. Grivas*, 113 A.D.2d 264 [2nd Dept 1985]; *Airco Allloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68 [4th Dept. 1980]).

On a motion for summary judgment, parties must lay bare their proofs in non-hearsay form, and the movant must establish its *prima facie* entitlement to judgment as a matter of law (see *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]). The court's function, when presented with a motion for summary judgment, is not to determine credibility or engage in issue determination, but rather to determine whether there are material issues of fact for the court to determine (*see Quinn v. Krumland*, 179 A.D.2d 448 [1st Dept. 1992]). Summary judgment shall be granted only when there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law (*see Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 N.Y.2d 1065 [1979]); *Orwell Bldg. Corp. v. Bessaha*, 5 A.D.3d 573 [2d Dept. 2003]).

A plaintiff is not required to show absence of comparative fault in order to establish his or her prima facie entitlement to judgment as a matter of law on the issue of liability (*see Catanzaro v. Edery, et.al.*, 172 A.D.3d 995 [2nd Dept. 2019]; *Rodriguez v. City of New York*, 31 N.Y.3d 312). "'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' " *Witonsky v. New York City Tr. Auth.*, 145 A.D.3d 938, 939, 43 N.Y.S.3d 505, quoting *Nsiah-Ababio v. Hunter*, 78 A.D.3d 672, 672, 913 N.Y.S.2d 659; *see* Vehicle and Traffic Law § 1129[a]).

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision" (*Arslan v. Costello*, 164 A.D.3d 1408, 1409, 84 N.Y.S.3d 229 [internal quotation marks omitted]; see *Edgerton v. City of New York*, 160 A.D.3d 809, 810, 74 N.Y.S.3d 617). Although a sudden stop

of the lead vehicle may constitute a non-negligent explanation for a rear-end collision, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent,"must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her vehicle and the vehicle ahead" (*Arslan v. Costello*, 164 A.D.3d at 1409-1410, 84 N.Y.S.3d 229 [internal quotation marks omitted]; see *Waide v. ARI Fleet, LT*, 143 A.D.3d 975, 976, 39 N.Y.S.3d 512). "In chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle was struck from behind by the rear vehicle and propelled into the lead vehicle" (*see Skura v. Wojtlowski, et. al.*, 165 A.D.3d 1196, 1198-1199 [2nd Dept. 2018] quoting *Kuris v. El Sol Contr. & Constr. Corp.*, 116 A.D.3d 675, 676 [2nd Dept. 2014]).

Here, in support of their motion, the Zaruma defendants submitted, *inter alia*, an affidavit of defendant Zaruma stating that he was driving slowly in heavy traffic, saw the traffic light turn red and the line of cars all stopped in front of him, as he then brought his vehicle to a stop behind them. After he was stopped for three or four seconds, his car was struck in the rear by the Vasquez defendants' car, causing his car to push forward into the plaintiffs' car in front of him. Thus, the Zaruma defendants established, *prima facie*, that the Vasquez defendants' driver's negligence was a proximate cause of the accident (*see Catanzaro v. Edery, et.al.*, 172 A.D.3d 995 [2nd Dept. 2019]).

In opposition to the Zaruma defendants' *prima facie* showing, the Vasquez defendants submitted an affirmation of their attorney, the relevant police report, and an unsworn and illegible MV-104. They did not submit an affidavit surrounding the circumstances of the accident. As such, the Vasquez defendants failed to raise a non-negligent explanation for striking the rear of the Zaruma defendants' vehicle, and there are no triable issues of fact as to the liability of the movants (*see Vasquez v. New York City Tr. Auth.*, 94 A.D.3d 870 [2nd Dept. 2012]). The Plaintiffs did not oppose the motion.

In her affirmation, the Vasquez defendants' attorney asserts that summary judgment is premature at this juncture because discovery is not complete, and depositions are ongoing. However, there is no evidentiary basis to suggest that further depositions may lead to relevant evidence or that the facts essential to justify opposition to the motion are

exclusively within the knowledge and control of the movant (*see Castro v. Rodriquez, et.al.*, 176 A.D.3d 1071 [2nd Dept. 2019]). Further, while it is well-settled that the affirmation of an attorney is insufficient to meet the burden of proof on a summary judgment motion (*see Palo v. Principio*, 303 A.D. 2d 478 [2nd Dept. 2002]), counsel's assertion that there exist uncorroborated and missing facts is speculative at best, and fails to raise a triable issue of fact (*see Skura v. Wojtlowski, et. al.*, 165 A.D.3d 1196, 1199 [2nd Dept. 2018]).

Accordingly, the Zaruma defendants' motion for summary judgment on the issue of liability is granted, the complaint (as to the Zaruma defendants), and all cross-claims against them, are dismissed.

Dated: May 6,2020

JANICE A. TAYLOR, J.S.C.

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