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

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GERMAN REYES and LUZ RODRIGUEZ,

Plaintiffs,

- against -

BEAUCHAMP MALDONADO,

Defendant.

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DECISION AND ORDER

Index No. 32527/2018E

John R. Higgitt, J.

Upon plaintiffs' January 17, 2020 notice of motion and the affirmation, affidavits and exhibit submitted therewith; defendant's February 11, 2020 affirmation in opposition; and due deliberation; plaintiffs' motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and summary judgment dismissing defendant's affirmative defense alleging plaintiffs' culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that took place on March 28, 2016. In support of their motion, plaintiffs submit the pleadings, the police accident report, and their affidavits.

Plaintiff Reyes averred that at the time of the accident his vehicle was stopped due to a red traffic signal at the intersection of Clinton Street and East Hudson Street when his vehicle was struck in the rear by defendant's vehicle. Plaintiff Rodriguez's affidavit corroborates plaintiff Reyes' narrative regarding the accident. Plaintiffs also submit the police accident report that contains the following party admission by defendant: he "struck [plaintiffs' vehicle] from the back causing damage to his front bumper" (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

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 (*id.*).

In opposition to plaintiffs' prima facie showing of entitlement to judgment as a matter of law, defendant failed to raise a triable issue of fact as to his liability. The affirmation of counsel alone is not sufficient to rebut plaintiff's 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]).

As to the aspect of plaintiffs' motion seeking dismissal of defendant's first affirmative defense alleging plaintiff Reyes' comparative fault, plaintiffs made a prima facie showing that plaintiff Reyes' bears no such fault (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Moreover, under the circumstances, the "innocent passenger" plaintiff Rodriguez is free of comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]). Because defendants failed to raise a triable issue of fact as to plaintiffs' comparative fault, the aspect of plaintiffs' motion seeking dismissal of defendant's first affirmative defense alleging plaintiffs' comparative fault is granted.

Accordingly, it is

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

ORDERED, that the aspect of plaintiffs' motion seeking dismissal of defendant's first affirmative defense alleging plaintiffs' comparative fault is granted, and that defense is dismissed.

This constitutes the decision and order of the court.

Dated: March 17, 2020

John R. Higgitt, J.S.C.