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

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GEORGINA VERAS,

Plaintiff,

- against -

JAMIE M. GUZMAN, GISELA VERAS, and STEVEN EDWARD LEVITT,

Defendants.

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DECISION AND ORDER

Index No. 25733/2019E

John R. Higgitt, J.

Upon plaintiff's February 3, 2020 notice of motion and the affirmation and exhibits submitted in support thereof; defendant Levitt's February 14, 2020 affirmation in opposition; plaintiff's February 20, 2020 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant Levitt's liability for causing the subject accident is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on December 7, 2017. In support of her motion, plaintiff submitted the pleadings and her affidavit. Plaintiff averred that at the time of the accident she was a passenger in the vehicle operated by defendant Guzman and owned by defendant Veras ("the Guzman defendants") that was stopped for about 6 seconds due to heavy traffic when defendant Levitt's vehicle struck the rear of the vehicle occupied by plaintiff.

"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 non-negligent 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]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

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.*).

Plaintiff made a prima facie showing that defendant Levitt violated Vehicle and Traffic Law § 1129 and that such violation was a proximate cause of the accident.

In opposition to plaintiff's 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]).

Defendant Levitt argues that the motion should be denied because plaintiff failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. Defendant Levitt also asserts that plaintiff's affidavit does not contain sufficient detail to warrant summary judgment. However, an affidavit submitted by an interested party with personal knowledge of

how the accident occurred is competent evidence and may be sufficient to discharge the interested party's summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]). Here, plaintiff's affidavit and defendant Levitt's admission in his answer demonstrated plaintiff's entitlement to a judgment as a matter of law on the issue of liability.

Defendant Levitt further asserts that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the defendant [Levitt's] vehicle struck the rear end of [the vehicle plaintiff occupied] reasonably rests within defendant driver's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2007]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). 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, supra*; *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]). Notably, defendant Levitt did not provide an affidavit in connection with this motion, and no reason was given for his failure to do so.

Because plaintiff made a prima facie showing of entitlement to judgment as a matter of law and defendant Levitt failed to raise a triable issue of fact as to his liability, plaintiff's motion for summary judgment against Levitt is granted.

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendant Levitt's liability for causing the accident is granted.

This constitutes the decision and order of the court.

Dated: April 28, 2020

John R. Higgitt, J.S.C.