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

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JOSHUA SABATER,

Plaintiff,

- against -

ATHANASE NOUMBI,

Defendant.

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DECISION AND ORDER

Index No. 28550/2019E

John R. Higgitt, J.

Upon plaintiff's January 6, 2020 notice of motion and the affirmation and exhibits submitted in support thereof; defendant's February 4, 2020 affirmation in opposition and the exhibit submitted thereof; plaintiff's February 12, 2020 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant'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 June 1, 2019. In support of his motion, plaintiff submitted the pleadings, the police accident report and his affidavit.

Plaintiff averred that at the time of the accident he was a passenger in a non-party driver's vehicle that was stopped a red traffic signal at the intersection of Third Avenue and East 172nd Street in Bronx County when defendant's vehicle struck the rear of the vehicle occupied by plaintiff. The police accident report that contains the following party admission by defendant: plaintiff's vehicle "stopped abruptly under a traffic device showing a yellow light causing [defendant's vehicle] to collide with the rear of [plaintiff's vehicle]" (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

"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 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 on the issue of defendant's liability, defendant failed to raise a triable issue of fact. Defendant asserts that the motion should be denied because there is a question of fact as to how the accident occurred. Defendant provided a MV-104 accident report containing statements made by him to the effect that the accident occurred because the vehicle that plaintiff occupied made a sudden stop. Defendant's unsworn self-serving statement in the MV-104 accident report is

hearsay and insufficient to raise a triable issue of fact (*see Rue v Stokes*, 191 AD2d 245 [1st Dept 1993]).

In any event, generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, 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]). Furthermore, "[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" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). The principle that a claim of a sudden stop by the rear-ended vehicle is insufficient to constitute a non-negligent explanation for a hit-in-the-rear accident has particular force when the accident occurs on a local public roadway in the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]). Thus, defendant's claim that the non-party driver made a sudden stop is insufficient to raise a triable issue of fact as to defendant's liability.

Defendant 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 driver'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 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 failed to raise a triable issue of fact as to his liability, plaintiff's motion for summary judgment against defendant is granted.

Under the circumstances, the "innocent passenger" plaintiff is entitled to dismissal of defendant's affirmative defense of comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

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

ORDERED, that defendant's affirmative defense alleging plaintiff's comparative fault is dismissed.

This constitutes the decision and order of the court.

Dated: March 16, 2020

John R. Higgitt, J.S.C.