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

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YOMARY E. GOMEZ,

Plaintiff,

- against -

GIZELA MALEK, NISSAN INFINITI LT and CESAR MENA LIMA,

Defendants.

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DECISION AND ORDER

Index No. 31082/2019E

John R. Higgitt, J.

Upon defendant Lima's January 9, 2020 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendant Malek's January 20, 2020 affirmation in opposition; defendant Nissan Infiniti LT's February 6, 2020 affirmation in opposition and the exhibits submitted therewith; plaintiff's March 9, 2020 affirmation in opposition; and due deliberation; defendant Lima's motion for summary judgment dismissing the complaint as against him and all cross claims against him 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 May 13, 2019. Defendant Lima seeks summary judgment dismissing the complaint as against him and the cross claims against him on the ground that he is not liable for the accident. In support of his motion, defendant Lima submits the pleadings, the police accident report, and his affidavit.

Defendant Lima averred that, at the time of the accident, he was stopped due to a red traffic signal when his vehicle was struck in the rear by the vehicle operated by defendant Malek and owned by defendant Nissan Infiniti, causing his vehicle to move forward and strike the vehicle ahead of his.

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]). A rear-end collision establishes 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]), and a presumption of non-negligence of the driver of the lead vehicle (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]).

Defendant Lima made a prima facie showing that he is not liable for the accident as his vehicle was struck in the rear by another vehicle.

In opposition to defendant Lima's motion, the non-moving parties failed to raise a triable issue of fact as to defendant Lima's liability for causing the subject accident.

The non-moving parties assert that there are questions of fact as to the location where the accident took place because defendant Lima averred that the accident took place on West 20th Street, while the police accident report stated that the accident took place on 20 West Street. The issue as to the location of the accident is not material to the subject of whether defendant Lima negligently operated his vehicle so as to cause injuries to the plaintiff. The unrebutted evidence established that defendant Lima's vehicle was struck in the rear, apparently by the vehicle occupied by plaintiff. No evidence has been submitted that suggests that any act by or omission of defendant Lima contributed to the hit-in-the rear accident.

The non-moving parties further argue that the motion should be denied because defendant Lima failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party 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]).

The non-moving parties also assert that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the [vehicle operated by defendant Malek] struck the rear end of [defendant Lima's vehicle] reasonably rests within defendant [Malek's] own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *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]), and the non-moving parties offered nothing to suggest that additional discovery may yield information bearing on whether defendant Lima operated his vehicle in a negligent manner. Notably, neither defendant Malek nor plaintiff submitted an affidavit controverting defendant Lima's version of the accident.

Accordingly, it is

ORDERED, that defendant Lima's motion for summary judgment is granted, and the complaint as against him and the cross claims against him are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Lima dismissing the complaint as against him and the cross claims against him.

This constitutes the decision and order of the court.

Dated: May 21, 2020

John R. Higgitt, J.S.C.