

**Seda v Joseph**

2022 NY Slip Op 32529(U)

January 7, 2022

Supreme Court, Bronx County

Docket Number: Index No. 805870/2021E

Judge: Veronica G. Hummel

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, IAS PART 31**

<p>NORA SEDA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>CLIFFORD JOSEPH, HHH TRANSPORT, INC., and "JOHN DOE" NYAMA,</p> <p style="text-align: center;">Defendants.</p>
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**Index No. 805870/2021E**

**HON. VERONICA G. HUMMEL, A.J.S.C.**

**Mot. Seq. No. 1**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in regard to the motion of defendant CLIFFORD JOSEPH ("movant" or "defendant Joseph") (Seq. No. 1) seeking an order, pursuant to CPLR 3212, granting defendant Joseph summary judgment dismissing the complaint and all cross-claims asserted against him.

This is a personal-injury action arising out of a two-car rear-end accident that occurred on December 24, 2019, at or near the intersection of the Grand Concourse Service Road and 183<sup>rd</sup> Street, Bronx N.Y. (the "Accident").

In support of the motion, defendant Joseph submits an attorney affirmation, an affidavit, a statement of material facts, copies of the pleadings and a copy of the no-fault application.

In opposition to the motion, plaintiff NORA SEDA ("plaintiff") and co-defendants HHH TRANSPORT, INC. and LORD NYAMA i/s/h/a "JOHN -DOE" NYAMA (jointly "co-defendants") submit only attorney affirmations. Notably, plaintiff and co-defendants do not include in their opposition papers a counterstatement of material facts corresponding to the movant's statement of material facts, as required by Uniform Trial Court Rule 202.8-g(b). 22 NYCRR 202.8-g (eff. Feb. 1, 2021). Consequently, under Rule 202.8-g(c), each fact stated in defendant Joseph's statement of material facts is deemed admitted.

The relevant admitted—and thus undisputed—facts are as follows: The Accident occurred as set forth above on December 24, 2019. Plaintiff was a passenger in the vehicle operated by defendant Joseph ("the Joseph Vehicle"). Defendant Joseph was stopped at a red light behind two other vehicles also stopped for the red light at the intersection. The Co-defendants' Vehicle struck the rear of the Joseph Vehicle as it was stopped at the red light and caused the Accident.

In his affidavit, defendant Joseph further avers that at the time of the Accident, the weather was clear and dry. He had not consumed any alcohol, medication, or drugs within 12 hours of the Accident. He was not using his cell phone and he was not distracted.

While travelling northbound on the Grand Concourse Service Road and approaching 183<sup>rd</sup> Street, defendant Joseph observed traffic ahead slowing down for a red traffic light. As a result, movant slowed his vehicle gradually and brought it to a stop a few feet behind the vehicle in front of his vehicle. The Joseph Vehicle was the third car from the light. While stopped for at least 30 seconds, the Joseph Vehicle was suddenly and without warning struck in the rear by the Co-defendants' Vehicle. Defendant Joseph did not observe the Co-defendants' Vehicle before impact. Movant had no fault in the Accident due to being rear-ended while lawfully stopped due to traffic in front of his vehicle that was stopped at a red traffic light. Defendant Joseph's actions did not contribute to causing the Accident and Co-defendants' actions were the sole cause of the Accident.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Upon such a showing, the burden then shifts to the movant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006).

Since there can be more than one proximate cause of an accident, a defendant moving for summary judgment is required to make a *prima facie* showing that he or she is free from fault. *see Harrigan v. Sow*, 165 A.D.3d 463 (1st Dep't 2018); *Hilago v. Vasquez*, 187 A.D.3d 683 (1st Dep't 2020). In order for a defendant driver to establish entitlement to summary judgment on the issue of liability in a motor vehicle collision case, therefore, the driver must demonstrate, *prima facie*, that he or she kept the proper lookout, or that his or her alleged negligence, if any, did not contribute to the accident. *see Harrigan v Sow, supra; Hilago v Vasquez, supra.*

In terms of presumption of liability, it is well settled that a rear-end collision with a stationary vehicle creates a *prima facie* case of negligence requiring judgment in favor of the stationary vehicle unless the non-movant party proffers a non-neglect explanation for the failure to maintain a safe distance. *Matos v. Sanchez*, 147 A.D.3d 585 (1st Dep't 2017); *see Perdomo v. Llanos*, 158 A.D.3d 580 (1st Dep't 2018); *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep't 2018); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep't 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep't 2006). Under New York Vehicle and Traffic Law ("VTL") § 1129(a), "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 vehicle and traffic upon the condition of the highway.” In other words, a driver must maintain a safe distance between his vehicle and the one in front of him.

A violation of VTL § 1129(a) is *prima facie* evidence of negligence, and “[t]his rule has been applied when the front vehicle stops suddenly in slow-moving traffic.” *Rodriguez v. Budget Rent-A-Car Sys., Inc.*, 44 A.D.3d 216, 223-24 (1st Dep’t 2007) (quoting *Johnson v. Phillips*, 261 A.D.2d 269, 271 (1st Dep’t 1999); *Mascitti v. Greene*, 250 A.D.2d 821, 822 (2d Dep’t 1998). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. See *Soto-Marouquin v. Mellet*, 63 A.D.3d 449, 450 (1st Dep’t 2009).

First Department case law is also clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence *Bajrami .v. Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep’t 2017); *Cabrera v Rodriguez*, 72 A.D.3d 553 (1st Dep’t 2010); see *Ly Giap v Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep’t 2018) (“A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent, and the stopped vehicle was not negligent”). Hence, the happening of a rear-end collision with a vehicle stopped at a red light is itself a *prima facie* case of negligence of the rearmost driver. *Vasquez v. Chimborazo*, 155 A.D.3d 432 (1st Dep’t 2017); see *Smyth v. Murphy*, 177 A.D.3d 492 (1st Dep’t 2019); *Corrigan v. Porter Cab Corp.*, 101 A.D.3d 471 (1st Dep’t 2012); *LaMasa v. Bachman*, 56 A.D.3d 340 (1st Dep’t 2008). Furthermore, a claim that a car had stopped at a yellow light does not constitute a nonnegligent explanation for the accident. see *Smyth v. Murphy, supra*; *Elihu v. Nicoleau*, 173 A.D.3d 578 (1st Dep’t 2019); *Matos v. Sanchez, supra*.

Based on these legal principles and the undisputed facts, defendant Joseph establishes *prima facie* entitlement to judgment as a matter of law by submitting evidence that he was driving safely, stopped at a red light, and his vehicle, the first in the chain, was struck in the rear by the vehicle driven by the co-defendant driver. Defendant Joseph’s submissions therefore demonstrate that his actions were not negligent, and did not contribute to causing the Accident, and co-defendants were solely responsible for the Accident.

Plaintiff and Co-defendants, in turn, fail to generate an issue of fact warranting the denial of the motion. The contention that defendant Joseph’s motion is premature because depositions have yet to be taken lacks merit. “Depositions are unnecessary [before the court determines the

liability motion], since [the parties] have personal knowledge of the facts, yet failed to meet their obligation of laying bare their proof and presenting evidence sufficient to raise a triable issue of fact.” *Thompson v Pizzaro*, 155 A.D.3d 423 (1st Dep’t 2017). Here, despite having the opportunity to do so, plaintiff and co-defendants do not submit *any* admissible evidence in opposition to the motion, including affidavits from the co-defendant driver or plaintiff presenting their own, contrary rendition of the circumstances surrounding the Accident.

Furthermore, co-defendants and plaintiff fail to come forward with an adequate non-negligent explanation for the accident or any evidence that movant’s actions were negligent and contributed to causing the Accident. The affirmations by the plaintiff’s and co-defendants’ attorneys in opposition to the motion fail to generate an issue of fact as to the cause of the accident as the affirmations have no probative value. *Thompson v. Pizzaro*, 155 A.D.3d 423 (1st Dep’t 2017). To extent that the attorney affirmations in opposition argue that there may be material questions of fact concerning the circumstances of the Accident, all such purported questions of fact are purely speculative, without any support in admissible evidence, and thus are insufficient to raise a question of fact. *See Cabrera v. Rodriguez*, 72 A.D.3d 553, 554 (1st Dep’t 2010) (citing *Alvord & Swift v. Muller Constr. Co.*, 46 N.Y.2d 276, 281-82 (1978)); *Garcia v. Verizon N.Y., Inc.*, 10 A.D.3d 339, 340 (1st Dep’t 2004).

In any event, First Department caselaw is clear that a claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver. *Ly Giap v. Hathi Son Pham, supra; Bajrami v. Twinkle Cab Corp., supra; see also Earl v. Hill*, 2021 N.Y. Slip Op. 06948 (1st Dep’t Dec. 14, 2021). Thus, any unsupported speculation that defendant Joseph stopped suddenly is insufficient to rebut the presumption that the co-defendant driver’s actions, in failing to maintain a safe distance between the Co-defendants’ Vehicle and the Joseph Vehicle, were the sole cause of the Accident.

Consequently, the motion by defendant Joseph is granted. *see Sirlin v. Schreib*, 117 A.D.3d 819, 819-820 (2d Dept’ 2014). Of note, an “innocent ... driver exists in a case where the ... driver did not contribute to the happening of the accident in any way. A typical example is the case at bar where ... [the] driver, while stopped, was rear-ended by the following driver.” *Oluwatayo v. Dulinayan*, 142 A.D.3d 113, 119 (1st Dep’t 2016).

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the

