SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM **PART** 05RCP

Justice

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KATHLEEN SANTANA, JOHN SANTANA

Plaintiffs,

- v -

CITY OF NEW YORK, FRANCO BASTERI,

Defendants.

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INDEX NO. 155763/2020

MOTION DATE 03/25/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing papers, plaintiffs' motion for partial summary judgment as to defendants' liability is denied.

This action arises from an automobile collision on April 24, 2019, when a truck owned by defendant the City of New York and operated by defendant Franco Basteri collided with plaintiff Kathleen Santana's vehicle at the intersection of East Houston Street and Allen Street, New York, New York (NYSCEF Doc. No. 1 [Compl. at ¶¶17-18]). Plaintiffs commenced this action on July 27, 2020, alleging that Kathleen Santana sustained serious injuries from the subject collision and asserting claims against defendants for negligence and loss of consortium (NYSCEF Doc. No. 1 [Complaint]).

Kathleen Santana testified at an examination before trial ("EBT") that, on the date of the collision, she was stopped at a red light at the subject intersection when she felt a "jolt" to the rear bumper of the driver's side of her car followed by three more impacts to the driver's side of her car (NYSCEF Doc. No. 45 [Santana EBT Tr. at pp. 26-30]). After the fourth impact, plaintiff

exited her car and "jumped out of the vehicle" twisting her left knee in the process and stood waving her arms in front of the truck (Id.).

Basteri, a New York City Department of Transportation ("DOT") employee, testified at his EBT that on the date of the accident he was traveling eastbound in the left lane on East Houston Street, approaching its intersection with Allen Street—where he intended to make a left turn—when he encountered barrels blocking the left turning lane (NYSCEF Doc. No. 41 [Basteri Tr. at pp. 26-28]). As a result Basteri attempted to merge into the right lane so that he could go around these barrels (Id. at p. 28). Basteri testified to the events that ensued as follows:

> Q. You mentioned that there was a traffic light controlling traffic at the intersection of Allen and East Houston, correct?
>
> A. Correct.
>
> Q. That traffic light was red at the time that you approached the intersection; is that correct?
>
> A. Correct.
>
> Q. There were vehicles stopped to your immediate right; is that correct?
>
> A. Correct.
>
> Q. One of those vehicles was the vehicle operated by the plaintiff in this case Kathleen Santana; is that right?
>
> A. Correct.
>
> Q. When you were in the left lane you came upon those barrels, you attempted to merge into the lane where Kathleen Santana's vehicle was stopped; is that correct?
>
> A. Correct.
>
> Q. As a result of that vehicle your vehicle struck the vehicle operated by Kathleen Santana that was stopped to the lane to your immediate right; is that correct?
>
> A. Correct.
>
> ...

Q. Did there ever come a time when you saw Ms. Santana's vehicle before you struck it?

A. No.

...

Q. You had no problem seeing what was in front of you or next to you or anything; is that fair to say?

A. That is fair to say.

Q: The cab where you sit starts about what, five to six feet off of the ground?

A: Yes.

Q: So your height is at least six feet off of the ground, correct, when you are seated in the cab?

A: Yes.

Q: Fair to say you have a good view of what is in front of you and to the side of you?

A: Yes. Yes and no, because the truck does have a blind spot to the right.

Q: You have operated this truck before and you are aware of the blind spots; is that fair to say?

A: Yes.

Q: You had no problem seeing out of the front or the side windows, correct?

A: Yeah, the front windows were clear and my passenger window was clear too

(NYSCEF Doc. No. 41 [Basteri Tr. at pp. 29-36]).

Plaintiffs now move, pursuant to CPLR §3212, for an order granting them partial judgment on the issue of liability against defendants, on the grounds that Kathleen Santana and Basteri's testimony establishes that Basteri rear-ended Kathleen Santana's stopped vehicle, thereby establishing Basteri's negligence, prima facie. Defendants oppose plaintiffs' motion, arguing that

issues of fact exist as to whether: (1) the collision in question was a rear-end collision; (2) Basteri was negligent in changing lanes; and (3) the collision was the proximate cause of plaintiff's knee injury. For the reasons set forth below, plaintiffs' motion is denied.

DISCUSSION

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]). Plaintiffs have not made such a prima facie showing.

"A grant of partial summary judgment against a defendant on liability in a negligence case is the equivalent of finding that the defendant owed the plaintiff a duty of care, the defendant breached that duty by its negligence, and such breach proximately caused the plaintiff injury" (Oluwatayo v Dulinayan, 142 AD3d 113, 117 [1st Dept 2016] [internal citations omitted] [emphasis added]) leaving only damages to be determined.

Plaintiffs have established, as a matter of law, that Basteri was negligent in his operation of the vehicle and that this negligence was the proximate cause of the collision. It is well-settled that "a rear-end collision with a stopped vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle" (Tutrani v County of Suffolk, 10 NY3d 906, 908 [2008]), and Kathleen Santana's undisputed testimony that Basteri hit her rear bumper on her driver's side is sufficient to satisfy this standard (See DeJorge v Metro. Foods, Inc., 191 AD3d 500 [1st Dept

2021] ["Jorge established his prima facie entitlement to judgment as matter of law" through deposition testimony "that his vehicle was stopped at the traffic light when his vehicle's rear driver side bumper was struck by defendant Metropolitan Foods' left-turning truck"]). Even crediting defendants argument that the subject accident was not a "rear end collision," would not create a question of fact as to Basteri's negligence, as his "collision with a stationary vehicle amounts to prima facie evidence of negligence on the part of the operator of the moving vehicle" (Guzman v Schivone Const. Co., 4 AD3d 150, 150 [1st Dept 2004]). Neither is Basteri's testimony that Kathleen Santana's car was in his truck's blind spot sufficient to create a question of fact as to his negligence (See e.g., Raizner v M & G Taxi, LLC, 2022 WL 1062733 [Sup Ct, NY County 2022]; Brown v Visionpro Networks Inc, 2022 WL 738418, 2022 NY Misc LEXIS 4656 [Sup Ct, NY County 2022]; Jones v Walsh 2020 WL 13094556 [Sup Ct, Kings County 2020]; Wayne v Cheung 2014 WL 12961128 [Sup Ct, Queens County 2014]).

Plaintiffs have not, however, established that the collision caused by Basteri's negligence was the proximate cause of plaintiffs' injuries. Kathleen Santana testified that she injured her knee upon exiting her car after the collision. As a result, whether this injury was a foreseeable result of the collision such that it was proximately caused by Basteri's negligence presents a factual question that cannot be resolved at this juncture (See Grossi v Sylak, 72 AD3d 895, 895 [2nd Dept 2010] [whether plaintiff's injury in slip and fall while returning to vehicle after exchanging insurance information with defendant was a foreseeable consequence of rear-end collision was triable issue of fact precluding summary judgment for defendant]; Carson v Dudley, 25 AD3d 983, 984 [3rd Dept 2006] ["while a jury could determine that the sole cause of plaintiff's injuries was her decision to descend from the bus onto the road, it could also reasonably determine that it was foreseeable that plaintiff would exit her school bus [after the collision] to investigate the condition

of the occupants of defendant's car and … slip and fall due to the slippery roadway"]). Given this outstanding question of fact, plaintiffs' motion must be denied.

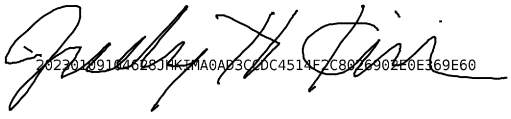
Accordingly, it is

ORDERED that plaintiffs' motion for partial summary judgment is denied; and it is further

ORDERED that within twenty days of the date of this decision and order counsel for the City of New York shall serve a copy of this decision and order with notice of entry upon plaintiff as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "EFiling" page on this court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



1/9/2023
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE