SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JEANINE R. JOHNSON** **PART** **52-M**

Justice

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BLAS J. CESPEDES,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, GREGORY G. DORSETT

Defendant.

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INDEX NO. 157549/2023

MOTION DATE 01/17/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER.

Upon the foregoing documents and oral argument heard on 05/29/2024, Plaintiff, Blas J. Cespedes's motion for summary judgment pursuant to CPLR § 3212 on the issue of liability and to strike Defendants – City of New York, New York City Department of Transportation, and Gregory G. Dorsett's (hereinafter, collectively "Defendants") affirmative defenses of failure to wear a seatbelt, comparative negligence and culpable conduct is granted.

To succeed on a motion for summary judgment, the moving party must make a prima facie showing of entitlement to summary judgment as a matter of law by demonstrating the absence of any material issues of fact. *See generally Friends of Thayer Lake LLC v. Brown,* 27 N.Y.3d 1039 (2016). *Jacobsen v. New York City Health & Hosps. Corp.,* 22 N.Y.3d 824 (2014); CPLR §3212(b). "If the moving party makes out a prima facie showing, the burden then shifts to the non-moving party to establish the existence of material issues of fact which preclude judgment as a matter of law." *Jacobsen,* 22 N.Y.3d at 833. If there are no material, triable issues

of fact, summary judgment must be granted. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957).

Pursuant to New York Vehicle and Traffic Law § 1129(a), "the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for speed of such vehicles and the traffic upon and the condition of the highway." Additionally, "it is well settled that a rear-end collision with a stopped vehicle created a presumption that the operator of the moving vehicle was negligent." *Agramonte v. City of New York*, 288 A.D.2d 75, 76 (1st Dept 2001).

This case arises from a motor vehicle accident where Plaintiff was stopped at a red light and rear-ended by a truck owned by Defendants – City of New York and New York City Department of Transportation and operated by Defendant – Gregory G. Dorsett (hereinafter "Defendant–Dorsett"). Defendants failed to provide a nonnegligent reason for the collision. *See Vasquez v. Strickland*, 211 A.D.3d 414 (1st Dept 2022). This Court finds that Defendants violated NY Vehicle and Traffic Law § 1129(a) by failing to maintain a safe distance from Plaintiff which resulted in the rear-end collision. Therefore, Plaintiff's motion for summary judgment is granted on the issue of liability.

Defendants assert several affirmative defenses against Plaintiff such as failure to wear a seatbelt, comparative fault, and culpable conduct. Plaintiff testified in his 50-h hearing that he was wearing a seatbelt at the time of the accident and the issue of whether Plaintiff was wearing a seatbelt is not a defense to liability but limited to the jury's determination of Plaintiff's damages. *See Delgado v. Martinez Family Auto*, 113 A.D.3d 426 (1st Dept 2014). Defendants argue that Plaintiff's motion is premature because discovery is necessary to determine whether there was any comparative fault or culpable conduct by Plaintiff. Defendants submitted an

affidavit from Defendant–Dorsett which explains his recollection of the events and his statements do not allege negligent conduct by Plaintiff. Defendant–Dorsett alleges that the traffic light turned green, Plaintiff began to drive, Defendant–Dorsett began to drive, Plaintiff came to a sudden stop, and then Defendant–Dorsett rear-ended Plaintiff. *See* NYSCEF Doc. No. 16, Def. Gregory Dorsett Aff. at ¶ 3.

This Court finds that this motion is not premature because any relevant facts that would give rise to negligent and culpable conduct by Plaintiff would be provided in Defendant–Dorsett's affidavit. Defendant-Dorsett's recollection further shows that Defendants violated New York Vehicle and Traffic Law § 1129(a) by failing to maintain a safe distance between vehicles. Additionally, Defendants failed to explain what evidence could be uncovered to show negligent conduct by Plaintiff. *See Vasquez*, 211 A.D.3d 414. Therefore, Plaintiff's motion to strike all affirmative defenses is granted.

Accordingly it is hereby,

ORDERED that Plaintiff, Blas J. Cespedes' motion for summary judgment is granted on the issue of liability, it is further

ORDERED that Plaintiff's motion to strike Defendants affirmative defenses is granted; and it is further

ORDERED that the liability portion of this case is determined, and the case shall proceed on the issue of damages only.

This constitutes the Decision and Order of the Court.

8/01/2024
DATE

JEANINE R. JOHNSON, J.S.C.

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