SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JAMES G. CLYNES** **PART** **22**

Justice

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YAEL YONAH,

Plaintiff,

- v -

FAST RIDE CAR SERVICE INC., DELANCEY CAR SERVICE INC., RAMON GUZMAN, ELLEN OWENS

Defendant.

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INDEX NO. 154800/2024

MOTION DATE 09/30/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that plaintiff's motion for an Order granting summary judgment on the issue of liability in favor of plaintiff and against defendants Fast Ride Car Service, Inc., Ramon Guzman, and Ellen Owens, dismissing defendants' affirmative defenses alleging comparative negligence by plaintiff, and granting summary judgment in favor of plaintiff and against defendants on the issue of whether plaintiff's alleged injury satisfies the serious injury threshold requirement of Insurance Law 5102 (d) and 5104 are decided as set forth below.

Plaintiff seeks recovery for personal injury sustained as a result of a March 3, 2024 motor vehicle accident involving plaintiff a cyclist and the opening door of the vehicle owned by defendant Fast Ride Car Service (Fast Ride) and operated by defendant Ramon Guzman (Guzman) in which defendant Ellen Owens (Owens) was a passenger.

"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 eliminate any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party, opposing the motion to "demonstrate by admissible evidence the existence of a factual

issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). Violation of the Vehicle and Traffic Law ("VTL") constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep't 2009]). Pursuant to VTL 1231, every person riding a bicycle on a roadway is afforded the same rights and duties applicable to drivers. Under VTL 1214 "no person shall open the door of a motor vehicle on the side available to moving traffic unless it is reasonably safe to do so and can be done without interfering with the movement of other traffic." A "[p]laintiff's affidavit stating that the rear door of defendants' vehicle 'opened without warning' and struck the left side of his vehicle established that defendant driver violated [VTL] 1214, and that plaintiff was unable to avoid the accident" (*Tavarez v Herrasme*, 140 AD3d 453 [1st Dept 2016], *citing Montesinos v Cote*, 46 AD3d 774 [2nd 2007] [finding that "the evidence established that the injured plaintiff violated [VTL] 1214 by opening the door on the side of her car adjacent to moving traffic when it was not reasonably safe to do so, and was negligent in failing to see what, by the reasonable use of her senses, she should have seen"]).

Plaintiff's submission, through the certified police accident report, which identifies the parties, including plaintiff cyclist, defendant driver Guzman, defendant owner Fast Ride, and defendant passenger Owens, a video of the accident which shows that defendants' vehicle was stopped in the second lane from the curb and that the rear right side door of the vehicle open into the right lane of traffic and into the plaintiff as she passes on a bicycle, and an affidavit by plaintiff established prima facie negligence by defendants Fast Ride, Guzman, and Owens by demonstrating that Guzman and Owens violated VTL 1214 which constitutes negligence per se. The video shows that Guzman did not discharge the passenger at the curb, but stopped in the second lane of traffic away from the curb and that Owens opened the door into the right lane of traffic when it was not safe. In Plaintiff's affidavit, she avers that she was riding her bicycle in the right lane of traffic on West Houston Street, that she observed defendants' vehicle, stopped in the middle of the roadway in front of 32 West Houston Street an entire lane away from the curb, that as she approached the vehicle there was no other vehicle behind or to the right of defendants'

vehicle, that as she continued to ride her bicycle in the right lane closest to the curb she began to ride past defendants' vehicle, the right rear passenger door swung open in front of her causing the left part of her body and left hand, including her left pinky finger, to strike the rear passenger door causing plaintiff to fall off her bicycle and onto the roadway, that there was no time for her to react, that there was less than one second from the time she saw the door open until impact, that while she was on the ground she observed her left pinky to be nearly severed and hanging by what appeared to be nerve strands and that she further observed her left pinky bone split in half with bone fragments sticking out; and that defendant Owens identified herself to plaintiff at the scene of the accident and provided her contact information to plaintiff, and that plaintiff reviewed the video attached as an exhibit to the motion and that if fairly and accurately depicts the subject accident. Plaintiff's submission established prima facie negligence by defendants Fast Ride, Guzman and Owens by showing that defendant passenger Owens opened the right rear passenger door of the vehicle owned by defendant Fast Ride and operated by Guzman, on the side available to moving traffic, here the right lane of traffic, when it was not reasonably safe to do so, and that plaintiff was unable to avoid the accident. Thus, plaintiff has established that defendants violated VTL 1214 which constitutes negligence per se. Fast Ride, as owner of the vehicle operated by Guzman is liable pursuant to VTL 388. The burden now shifts to defendants to raise a triable issue of fact. In opposition, defendants Fast Ride and Guzman submit Guzman's affidavit which fails to raise an issue of fact sufficient to preclude a determination of liability in favor of plaintiff and against defendants.

In opposition, defendants fail to raise an issue of fact sufficient to preclude a determination of liability in favor of plaintiff and against defendants as a matter of law. The Guzman affidavit, in which he avers that he pulled over to the right side by the sidewalk to drop off a female passenger seated in the rear of his vehicle, that as his passenger was getting out he heard a noise, that after he heard the noise he saw that a female who was riding a bicycle collided with the door of his vehicle, but that he did not see the actual collision does not raise a material issue of fact sufficient to preclude a determination of liability against defendants. Guzman's testimony that he pulled to

the right to discharge a passenger is refuted by the video which shows the car stopped in the second lane of traffic away from the curb at the time of the accident. The opposition by defendant Owens is rejected as untimely. Even if it were considered, Owens' opposition consists of an attorney affirmation only and fails to raise an issue of fact sufficient to preclude a determination of liability in favor of plaintiff and against defendants. Owens has personal knowledge of the facts, yet she failed to meet her obligation of laying bare her proof and presenting evidence sufficient to raise a triable issue of fact (*Rosario v Vasquez*, 93 AD3d 509 [1st Dept 2012]). New York courts have consistently held an attorney's affirmation to be inadequate to oppose a summary judgment motion (*See GTF Marketing Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 968 [1985]).

There is no evidence of comparative fault by plaintiff. Therefore, the portion of the motion seeking to strike the defendants' affirmative defenses alleging comparative negligence are granted and the Second Affirmative Defense of Defendants Fast Ride and Guzman and the Second Affirmative Defense of Defendant Owens are dismissed.

Plaintiff's submission also established through the attached certified medical records that plaintiff sustained an open displaced fracture of the middle phalanx of her left little finger as a result of the accident and therefore established her prima facie entitlement to summary judgment on the issue of whether plaintiff's alleged injuries satisfy the "serious injury" threshold requirement of Insurance Law 5102 (d) and 5104. Defendants' opposition fail to raise an issue of fact sufficient to preclude a determination that plaintiff's alleged injuries, which include a fracture, satisfy the serious injury threshold requirement of Insurance Law 5102 (d) and 5104. There is no dispute that plaintiff sustained a fractured finger as a result of the accident. Therefore, that portion of the motion is also granted. Accordingly, it is

ORDERED that the portion of plaintiff's motion seeking summary judgment on liability in her favor and against defendants Fast Ride Car Service Inc., Ramon Guzman, and Ellen Owens is granted; and it is further

ORDERED that the portion of plaintiff's motion seeking dismissal of Defendants' Second Affirmative Defenses alleging contributory negligence by plaintiff is granted and those affirmative defenses are dismissed; and it is further

ORDERED that the portion of plaintiff's motion seeking summary judgment in her favor on the issue of whether her alleged injuries, which include a fracture to her left little finger, satisfy the serious injury threshold within the meaning of Insurance Law 5102 (d) is granted; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendant with notice of entry.

This constitutes the Decision/Order of the Court.

3/10/2025
DATE

JAMES G. CLYNES, J.S.C.

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