SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: PART 17

----------X

RAMON DIAZ-SUERO

Plaintiff,

- v -

KELVIN SANTANA CRUZ,

Defendant.

INDEX NO. 21826/2017E

MOTION DATE 01/27/2024

MOTION SEQ. NO. 1

DECISION + ORDER ON MOTION

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 1) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

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

Upon the foregoing documents, the motion is decided as follows:

Plaintiff filed a summons and complaint on March 7, 2017, alleging, inter alia, that he sustained serious injuries as a result of a motor vehicle accident on December 12, 2015, and seeks damages.

Defendant filed an answer on June 8, 2017.

On January 27, 2024, Plaintiff filed the instant motion for summary judgment regarding Defendant's liability and dismissing Defendant's affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct of Plaintiff.

Defendant filed opposition on February 22, 2024.

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact, and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action" (*Vega v Restani Constr. Corp.*, 18 NY3d 499,503 [2012]) (*internal citations and quotations omitted*). When a

movant establishes prima facie entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (*see Zuckerman v City of NY*, 49 NY2d 557[1980]).

"It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate nonnegligent explanation for the accident" (*Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]). When an auto accident involves a rear-end collision, "…the driver of the front vehicle is entitled to summary judgment on liability, unless the driver of the following vehicle can provide a nonnegligent explanation for the collision" (*Santana v Tic-Tak Limo Corp*., 106 AD3d 572,573-574 [1st Dept 2013]). The mere claim by a defendant that the vehicle driven by plaintiff in a rear-end collision stopped abruptly is insufficient to raise an issue of fact as to Plaintiff's negligence in operating the vehicle (*see Chame v Kronen*, 150 AD3d 622 [1st Dept 2017]). The operator of a motor vehicle is expected to maintain enough distance between his vehicle and vehicles ahead of him in order to avoid collision with a stopped vehicle (*see, eg, Williams v Kadri,* 112 AD3d 442,443 [1st Dept 2013]). "…[I]n requiring drivers to maintain a safe distance between their vehicles and the ones in front of them, Vehicle and Traffic Law §1129(a) imposes the duty to be aware of traffic conditions, including other vehicles suddenly stopping or slowing down" (*Matias v Grose*, 123AD3d 485,486 [1st Dept 2014]).

It is uncontroverted that this accident involved four cars travelling in the same lane, with vehicle number 2 having rear-ended vehicle number one, vehicle number 3 having rear-ended vehicle number 2 and vehicle number 4 having rear-ended vehicle number 3. Plaintiff was operating vehicle number 3 and Defendant was operating vehicle number 4. There is no factual dispute as to the fact that Defendant hit Plaintiff's vehicle from the rear. Thus, Plaintiff

established a prima facie case of negligence (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Defendant argues that there is a question of fact regarding whether Plaintiff "stopped short", creating a situation in which Plaintiff may bear a portion of the onus of causing the Defendant's rear collision. Defendant contends, "A 'short stop' is enough to defeat summary judgment, as the person 'short stopping' can have comparative fault, as the Court of Appeals has said in Tutrani v County of Suffolk, 10 NY3d 906 (2008)" (*sic*). Defendant cites to cases emanating from the Second Department to support his contention that his allegation that Plaintiff "stopped short" is sufficient to raise a triable issue of fact.

Defendant also argues that there is a question of fact as to whether Plaintiff was "already involved" in the accident before Defendant's car collided with Plaintiff's car, thereby creating an obligation on behalf of Plaintiff to give warning of the accident to motorists.

Contrary to Defendant's contentions, an allegation of a "short stop", in and of itself, does not automatically give rise to a question of fact (*see Chame v Kronen*, 150 AD3d 622 [1st Dept 2017]). Furthermore, whether Plaintiff's vehicle stopped short, or was already at a stop due to the accident when Defendant collided with the vehicle, Defendant offers no explanation as to why he did not maintain enough distance between himself and Plaintiff to avoid the collision. In the absence of any facts or evidence that would present a non-negligent reason for Defendant's rear-ending Plaintiff's vehicle, Defendant did not meet his burden of proof to counter Plaintiff's prima facie showing of entitlement to summary judgment on the issue of liability (*see Santana v Tic-Tak Limo Corp*., 106 AD3d 572,573-574 [1st Dept 2013]).

Additionally, Defendant's affirmative defense of comparative negligence is dismissed as Defendant failed to maintain a safe distance from Plaintiff's vehicle, which was the sole

proximate cause of the collision (*see Perez v City of New York*, 231 AD3d 633, 634 [1st Dept 2024]).

Based on the foregoing it is hereby,

ORDERED that Plaintiff's motion pursuant to CPLR §3212 for summary judgment against Defendant on the issue of liability is granted; and it is further

ORDERED that Plaintiff's motion to dismiss Defendant's second and fourth affirmative defenses is granted; and it is further

ORDERED that any relief requested and not decided herein is denied.

This decision constitutes the Order of the Court.

Dated: Bronx, New York

July 23, 2025 E N T E R,

Hon.

ERIN NOELLE GUVEN, A.J.S.C.

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY x CASE STILL ACTIVE
2. MOTION IS.....	X GRANTED DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE