To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY
P R E S E N T: HON. SAM D. WALKER, J.S.C.

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JOSE RODRIGUEZ, JR.,

Plaintiff,

-against-

MTA BUS COMPANY and DARRAYLE WILLIAMS,

Defendants.

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DECISION & ORDER
Index No. 53081/2019
Seq. 1

The following papers were read on a motion for summary judgment pursuant to CPLR 3212, on the issue of liability:

Notice of Motion/Affirmation/Exhibits A-B
Affirmation in Opposition/Exhibits A-B
Reply Affirmation

Upon the foregoing papers it is ordered that the motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Jose Rodriguez, Jr., commenced this action on February 25, 2019, to recover damages for alleged serious injuries sustained in a motor vehicle accident that occurred on February 9, 2018, at or near the intersection of Yonkers Avenue and Seminary Avenue in Westchester County, New York. The plaintiff testified at his 50-H hearing that he was in the right lane on Yonkers Avenue, when he came to a red light. The plaintiff testified that he was stopped for a minute or two at the red light, when the MTA bus hit his vehicle in the rear.

The plaintiff now files the instant motion seeking summary judgment against the defendants pursuant to CPLR 3212 on the issue of liability. In support of his motion, the plaintiff relies upon his attorney's affirmation, the 50-H hearing transcript and a copy of the pleadings. The defendants, oppose the motion, arguing that the motion is premature, since depositions and discovery have not been conducted. The defendants further submits the bus operator's affidavit and argue that the affidavit establishes a triable issue of fact as to the question of negligence.

Discussion

"[T]he 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" (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle, and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*see Sokolowska v Song*, 123 AD3d 1004 [2d Dept 2014]); *see also Agramonte v City of New York*, 288 AD2d 75, 76 [2001]; *Johnson v Phillips*, 261 AD2d 269, 271 [1999]; *Danza v Longieliere*, 256 AD2d 434, 435 [1998], lv dismissed 93 NY2d 957 [1999]).

In this case, the plaintiff has made out a prima facie showing of his entitlement to

summary judgment. The testimony submitted by the plaintiff establishes entitlement to summary judgment as a matter of law, thereby shifting the burden to the defendants to demonstrate the existence of a factual issue requiring a trial (*see Macauley v Elrac, Inc.*, 6 AD3d 584, 585 [2d Dept 2004]) [Rear-end collision is sufficient to create a prima facie case of liability.] If the operator of the striking vehicle fails to rebut this presumption and the inference of negligence, the operator of the stopped vehicle is entitled to summary judgment on the issue of liability (*see Leonard v City of New York*. 273 AD2d 205 [2d Dept 2000]; *Longhito v Klein*. 273 AD2d 281 [2d Dept 2000]; *Velasquez v Quijada*. 269 AD2d 592 [2d Dept 2000]; *Brant v Senatobia Operating Corp.*, 269AD2d 483 [2d Dept 2000]).

Upon viewing the evidence in a light most favorable to the non-moving party (*Pearson v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009]), and upon bestowing the benefit of every reasonable inference to that party (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546, 546 [2d Dept 1995]), the Court finds that the defendant has failed to rebut the plaintiff's prima facie showing.

New York Vehicle and Traffic Law § 1129 states in pertinent part that:

> The 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 vehicles and the traffic upon and the condition of the highway. NY VTL § 1129 (a)

In (*Leal v Wolff*), the Second Department held that "[s]ince the defendant was under a duty to maintain a safe distance between his car and [the plaintiff's] car (*see* Vehicle and Traffic Law Section 1129[a]), his failure to do so in absence of a non negligent explanation constituted negligence as a matter of law" (*Leal v Wolf.* 224 AD2d 392 [2d Dept 1996]).

Here, the defendants fail to offer any non-negligent explanation for the accident and

the opposition does not create any issues of fact with regard to liability. The bus operator attests that the plaintiff's van came to an abrupt stop, he immediately noticed the van coming to a stop and applied the brakes of the bus, which require approximately 45 pounds of pressure and that when he applied the brakes, the speed of the bus was no more than 5-7 miles per hour. However, "[w]hen the driver of an automobile approaches from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle" (*see Zweeres v Materi*, 94 AD3d 1111 [2d Dept 2012]). "Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Id.*).

The bus operator provides no non-negligent reason why, even if the plaintiff suddenly stopped his vehicle, he could not avoid colliding with the plaintiff's vehicle, especially since, he states that the bus was traveling no more than 5-7 miles per hour and the accident occurred between two traffic lights in close proximity with each other.

Furthermore, the need to conduct discovery does not warrant denial of the motion, since the plaintiff who testified at the 50-H hearing and the bus operator, who submitted an affidavit, both have personal knowledge of the relevant facts of the accident (*see Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]). Additionally, the defendants failed to demonstrate that discovery would lead to any additional relevant evidence or would provide a non-negligent explanation for the collision (*Rodriguez vFarrell*, 115 AD3d 929, 931 [2d Dept 2014]).

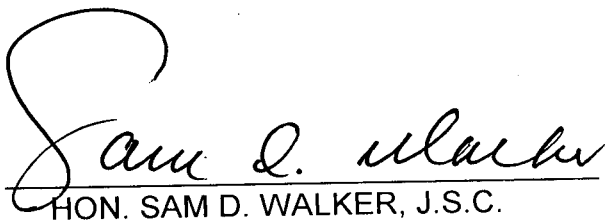
Accordingly, based on all the foregoing, it is

ORDERED that the plaintiff's motion for summary judgment on the issue of liability is GRANTED.

The parties are directed to appear before the Preliminary Conference Part on a date to be determined.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
December 21, 2020



HON. SAM D. WALKER, J.S.C.