SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----------X

LESLIE GONZALEZ and MANUEL DELGADO,

*Plaintiff*,

-against-

KYLE MORRIS,

*Defendant*.

----------X

**DECISION & ORDER**

Index No.: 030362/2018

(Motion # 1)

*Sherri L. Eisenpress, A.J.S.C.*

The following papers, numbered 1 through 5, were considered in connection with Plaintiff's Notice of Motion for an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting partial summary judgment in favor of Plaintiffs on the issue of liability:

| **PAPERS** | **NUMBERED** |
|---|---|
| NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF LESLIE GONZALEZ/EXHIBITS "A-D" | 1-3 |
| AFFIRMATION IN OPPOSITION | 4 |
| AFFIRMATION IN REPLY | 5 |

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

This action was commenced by Plaintiffs on January 18, 2018, with the filing of the Summons and Complaint through the NYSCEF system. Issue was joined as to Defendant Kyle Morris with the filing of Defendants''Answer through the NYSCEF system on June 19, 2018. Plaintiff filed the instant motion for partial summary judgment as to liability on August 2, 2018. This personal injury action arises from an accident which occurred on September 13, 2017, on Thiells Mt. Ivy Road, at its intersection with Brevoort Drive, in the Town of Haverstraw, Rockland County.

It is undisputed that at the above stated time and place, Plaintiff Leslie Gonzalez'

stopped vehicle was struck in the rear by a vehicle owned and operated by Defendant Kyle Morris. Plaintiff Manuel Delgardo was a front seat passenger in the Gonzalez vehicle. Plaintiff Leslie Gonzalez alleges in her Affidavit that approximately one block prior to the subject intersection, she turned her left turn signal on and began to bring her vehicle to a slow, gradual stop to wait for northbound traffic on Theills Mt. Ivy Road in order to make a left hand turn onto Brevoort Drive. After being at a full, complete stop for approximately 10-15 seconds while waiting to make her turn, her vehicle was suddenly and without warning struck in the rear by the front of defendant Kyle Morris' vehicle. In opposition to the summary judgment motion, Defendant Kyle Morris does not submit an Affidavit. Rather, he argues that summary judgment must be denied because discovery is not yet complete.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. *Giuffrida v. Citibank Corp., et al.*, 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. *Lacagnino v. Gonzalez*, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. *Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing *Alvarez*, *supra*, and *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980), 427 N.Y.S.2d 595. Most recently, the Court of Appeals in *Rodriguez v. City of New York*, 31 N.Y.3d 312, 2018 N.Y.Slip Op 02287 (2018), has held that "[t]o be entitled to partial summary judgment, a plaintiff does not bear the double burden of establishing a *prima*

*facie* case of defendant's liability and the absence of his or her own comparative fault."

It is well-settled that a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the moving vehicle, unless the operator of the moving vehicle can come forward with an adequate, non-negligent explanation for the accident. *See Smith v. Seskin,* 49 A.D.3d 628, 854 N.Y.S.2d 420 (2d Dept. 2008); *Harris v. Ryder*, 292 A.D.2d 499, 739 N.Y.S.2d 195 (2d Dept. 2002)]. Further, when the driver of an automobile approaches another 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. *VTL* § 1129(a) ("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 the condition of the highway."); *Taing v. Drewery*, 100 A.D.3d 740, 954 N.Y.S.2d 175 (2d Dept. 2012). Drivers must maintain safe distances between their cars and cars in front of them and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages. *Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 (1st Dept. 1999). In the instant matter, Plaintiffs have met their burden upon summary judgment since their vehicle was at a complete stop when it was struck in the rear by Defendant's vehicle. Defendant, who did not submit an affidavit, has failed to come forward with a non-negligent explanation for the rear-end collision and Plaintiffs are entitled to a grant of summary judgment as to liability in their favor as against Defendant.

There is no merit to Defendant's argument that the motion should be denied on the ground that discovery has not yet taken place. The party asserting such argument must demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant. *See Emil Norsic & Son, Inc. V. LP. Transp. Inc*., 30 A.D.3d 368, 815 N.Y.S.2d 736 (2d Dept. 2006); *Rodriguez v. Farrell*, 115 A.D.3d 929, 983 N.Y.S.2d 68 (2d Dept. 2014). "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered

during the discovery process is insufficient to deny the motion." *Figueroa v. MTLR Corp.*, 157 A.D.3d 861, 69 N.Y.S.3d 359 (2d Dept. 2018). Here, Defendant's contention that the Plaintiffs' motion is premature because Plaintiffs have not yet been deposed, does not establish what information the Defendant hopes to discover at the Plaintiffs' depositions that would relieve him of liability in this case. *See Cajas-Romero v. Ward*, 106 A.D.3d 850, 965 N.Y.S.2d 559, 562 (2d Dept. 2013).

Lastly, a compliance conference is already scheduled for February 4, 2018. This Court expects that all discovery on the issue of damages will be completed by that date including Plaintiffs' examinations before trial as to damages and all defense medical examinations. Plaintiffs will be expected to file their Note of Issue and Certificate of Readiness by that date.

Accordingly, it is hereby

**ORDERED** that Plaintiffs' Notice of Motion for Summary Judgment on the issue of liability is GRANTED in its entirety; and it is further

**ORDERED** that counsel for the parties shall appear before the undersigned for a compliance conference on **MONDAY, FEBRUARY 4, 2019, at 9:45 a.m.**

The foregoing constitutes the Decision and Order of this Court on Motion # 1.

Dated: New City, New York
December 3, 2018

**HON. SHERRI L. EISENPRESS**
**Acting Justice of the Supreme Court**

To:

All parties via NYSCEF