SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
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DEBORAH L. QUAGLIETTA and MICHAEL A. QUAGLIETTA,

Plaintiff,

-against-

STACY B. ZIEGLER,

Defendant.
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DECISION & ORDER

Index No.: 031127/2018

(Motion # 1)

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

The following papers, numbered 1 through 4, were considered in connection with Plaintiffs' 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/EXHIBITS A-F	1-2
AFFIRMATION IN OPPOSITION	3
AFFIRMATION IN REPLY	4

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

This action was commenced by Plaintiffs on February 28, 2018, with the filing of the Summons and Complaint through the NYSCEF system. Issue was joined as to Defendant Stacy B. Ziegler with the filing of Defendant's Answer through the NYSCEF system on April 25, 2018. This personal injury action arises out of a three car accident which occurred on November 12, 2017, on Route 202, approximately 100 feet west of Theills Mt. Ivy Road, in the Village of Pomona, Rockland County.

Plaintiff Deborah L. Quaglietta testified that she was in a stopped vehicle which was struck in the rear by a vehicle owned and operated by Defendant Stacy B. Ziegler. Plaintiff

testified at her examination before trial that she was at a complete stop for 5 to 10 seconds when she felt a "jolting" which caused her car to move forward and strike the vehicle in front of her. At the moment of impact, her right foot was on the brake.

Defendant Stacy Ziegler testified at her examination before trial that she brought her vehicle to a stop behind Plaintiff's vehicle because the traffic light was red. She specifically testified that she never saw the plaintiff's vehicle moving at any point in time and that the traffic light had not yet changed before the accident. After approximately five seconds, she testified that her foot must have slipped off the break and that she does not know what caused this to happen. She admits that when contact was made between the front of her vehicle and the rear of Plaintiff's vehicle, Plaintiff's vehicle was stopped. Moreover, the police accident report contains a statement that "Driver 2 [Ziegler] states that she was stopped in traffic and the next thing she knew she was driving into Vehicle 2 [Quaglietta]."

Plaintiff moves for summary judgment as to liability on the ground that her vehicle was completely stopped when it was struck in the rear by Defendant's vehicle, as evidenced by the testimony of all parties, as well Defendant's admission contained in the police report. In opposition thereto, Defendant contends that there is a triable issue of fact because Defendant did not know the plaintiff's vehicle was stopped before she brought her own vehicle to a stop, thus she was encountered with an unforeseeable situation where a vehicle in front of her may have stopped abruptly without any warning. In Reply, Plaintiff argues that there is absolutely no evidence which supports the contention that Plaintiff "stopped short."

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 Ms. Quaglietta was at a complete stop when her vehicle was struck in the rear by Defendant's vehicle. In opposition thereto, Defendant has failed to raise a triable issue of fact or present a non-negligent excuse for the happening of the subject occurrence. Based upon Defendant's own testimony wherein she states that her foot must have slipped off the brake, and that she never saw Plaintiff's vehicle move before the accident, there is no evidence to support her claim that Plaintiff had "stopped short," the causing Defendant to strike the rear of Plaintiff's vehicle.

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 in the Trial Readiness Part for a conference on **WEDNESDAY, JUNE 12, 2019, at 9:30 a.m.**

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

Dated: New City, New York
May 9, 2019

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

To:

All parties via NYSCEF