SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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WILLIAM HART,

Plaintiff,

- against -

EFREN ARTURO ROMANROJAS, DROPCAR, INC., DROPCAR OPERATING COMPANY, INC. d/b/a DROPCAR, INC. and SCOTT C. SIMONTON,

Defendants.

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DECISION AND ORDER

Index No. 23435/2019E

John R. Higgitt, J.

Upon plaintiff's September 13, 2019 notice of motion and the affirmation and the exhibits submitted in support thereof; the September 30, 2019 affirmation in opposition of defendants Romanrojas, Dropcar, Inc., Dropcar Operating Company, Inc. d/b/a Dropcar, Inc. ("the Romanrojas defendants") and the exhibits submitted therewith; defendant Simonton's September 30, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's October 7, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of the Romanrojas defendants' liability for causing the subject accident is granted.

Plaintiff renews his motion for summary judgment after his original motion was denied without prejudice to renewal on the ground that the prior motion sought summary judgment before issue was joined. Issue has now been joined by all defendants.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on July 15, 2017. In support of his motion, plaintiff submits the pleadings, the police accident report, and his affidavit. Plaintiff averred that at the time of the accident he was stopped due to a red traffic signal regulating his direction of travel when his vehicle was struck in the rear by the Romanrojas defendants' vehicle.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). A rear-end collision establishes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a "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" (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, defendants failed to raise a triable issue of fact. The affirmation of counsel alone is not sufficient to rebut plaintiff's prima facie showing of entitlement to summary judgment. In addition, bald, conclusory allegations, even if believable, are not enough to withstand summary judgment (*see Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255 [1970]).

The Romanrojas defendants' opposition is limited to challenging plaintiff's request for an immediate inquest. The taking of inquest shall be conducted at the time of trial.

Defendant Simonton asserts that the motion should be denied because plaintiff failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party is competent evidence and may be sufficient to discharge the interested party's summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]). While defendant Simonton correctly asserts that the police accident report is inadmissible, plaintiff's unrefuted affidavit was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Defendant Simonton further asserts that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the defendant's vehicle struck the rear end of plaintiff's car reasonably rests within defendant driver's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda*, *supra*; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Notably, defendants did not provide an affidavit in connection with this motion, and no reason was given for their failure to do so.[1]

Thus, because plaintiff made a prima facie showing of entitlement to judgment as a matter of law, and defendants failed to raise a triable issue of fact as to their liability, the aspect of plaintiff's motion for summary judgment as against defendants is granted.

[1] While defendant Simonton contents that he "merely owned the vehicle" driven by defendant Romanrojas, Simonton did not address his presumptive liability under Vehicle and Traffic Law § 388. Moreover, given the absence of an affidavit from defendant Simonton, the court cannot find that facts essential to Simonton's opposition are unavailable to him (*cf.* CPLR 3212[f]).

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defenses of comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

Accordingly, it is

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

The parties are reminded of the December 6, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 25, 2019

John R. Higgitt, A.J.S.C.