| **Carter v Estupinian** |
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| 2020 NY Slip Op 33486(U) |
| October 14, 2020 |
| Supreme Court, Kings County |
| Docket Number: 526144/2018 |
| Judge: Lara J. Genovesi |
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 14th day of October 2020.

P R E S E N T:
HON. LARA J. GENOVESI,
J.S.C.

-----------------------------------------------------------------X

DARION J. CARTER,

Plaintiff,

-against-

ARTHUR I. ESTUPINIAN and
CHRISTIAN ALEJANDRO GUTIERREZ

Defendants.

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Index No.: 526144/2018

DECISION & ORDER

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

| | NYSCEF Doc. No.: |
|---|---|
| Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed | 11, 16-18 |
| Opposing Affidavits (Affirmations) | 12 |
| Reply Affidavits (Affirmations) | 19 |

***Introduction***

Plaintiff, Darion J. Carter, moves by notice of motion, sequence number one, pursuant to CPLR § 3212, for summary judgment on the issue of liability and for such other relief as the Court deems proper. Defendants oppose this motion.

***Background***

This action involves a rear-end collision that occurred on March 22, 2018 on Rogers Avenue, Brooklyn, New York. Plaintiff was driving vehicle on Rogers at the time of the accident. Plaintiff's vehicle was at a complete stop for approximately five to ten seconds when his vehicle was struck in the rear. Plaintiff stated by affidavit that while at a complete stop for five to ten seconds when the front of defendant's vehicle struck his vehicle in the rear. Plaintiff further stated that his stop was not sudden (*id.*). Vehicle 2 was owned by defendant Arthur Estupinian and operated by defendant Christian Alejandro Gutierrez (Gutierrez).

Plaintiff annexed the certified police accident report wherein plaintiff, vehicle 1, stated that "VEHICLE 1 STATED HE WAS STOPPED IN TRAFFIC NORTH BOUND ON ROGERS AVENUE WHEN VEHICLE 2 REARENDED VEHICLE 1. VEHICLE 2 STATED HE WAS TRAVELING NORTH BOUND ON ROGERS AVE WHEN VEHICLE 1 STOPPED IN TRAFFIC CAUSING VEHICLE 2 TO REAR END VEHICLE 2 . . ." (*see* NYSCEF Doc. #11, Exhibit 4, Certified Police Accident Report).

Defendants do not provide an affidavit from the driver, Gutierrez. Rather, defendants aver that the motion should be denied on the ground that it is premature since no party to the action has been deposed.

This action was commenced by the filing of the summons and complaint on December 28, 2018 (*see* NYSCEF Doc. # 1). Issue was joined on February 13, 2019, 2019 (*see* NYSCEF Doc. #6).

## *Discussion*

### *Summary Judgment*

"[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" (*Stonehill Capital Mgmt., LLC v. Bank of the W.,* 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.,* 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]). Once a moving party has made a prima facie showing of its 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 which require a trial of the action (*see Fairlane Fin. Corp. v. Longspaugh,* 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra; see also Hoover v. New Holland N. Am., Inc.,* 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Xin Fang Xia v. Saft*, 177 A.D.3d 823, 113 N.Y.S.3d 249 [2 Dept., 2019]; *see also Ordonez v. Lee*, 177 A.D.3d 756, 110 N.Y.S.3d 339 [2 Dept., 2019]). A plaintiff

does not need to demonstrate the absence of their own comparative negligence to be entitled to partial summary judgment as to a defendant's liability (*see Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018]). However, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence (*see Poon v. Nisanov*, 162 A.D.3d 804, 79 N.Y.S.3d 227 [2 Dept., 2018]).

In the case at bar, plaintiff met his prima facie burden by providing an affidavit stating that he was at a complete stop when his vehicle was struck in the rear. Plaintiff also provided the certified police accident report which contained defendant's admission that he rear-ended plaintiff (*see* NYSCEF Doc # 11, *supra; see also Yassin v. Blackman*, -- A.D.3d --, 2020 NY Slip Op 05090 [2 Dept., 2020]). While driving on Rogers Avenue, plaintiff's vehicle was at a complete stop in traffic. Plaintiff demonstrated that he was not negligent in the happening of the accident. Plaintiff has further established that the actions of defendant driver, Gutierrez were the sole proximate cause of the accident. Plaintiff's vehicle was at a complete stop when it was struck in the rear by defendant vehicle (*see generally Poon v. Nisanov*, 162 A.D.3d 804, *supra*; *Ortiz v Welna,* 152 A.D.3d 709, 58 N.Y.S.3d 556 [2 Dept., 2017]).

In opposition, defendants failed to rebut plaintiff's prima facie showing and the presumption of negligence. The defendants do not provide a non-negligent explanation for their rear-end collision with plaintiff. The defendants fail to include an affidavit from the driver. Defendants simply contend that the instant motion is premature because the

parties have not been deposed. However, this Court finds this argument unpersuasive. "A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence. 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" (*Rungoo v. Leary*, 110 A.D.3d 781, 972 N.Y.S.2d 672 [2 Dept., 2013] [internal citations omitted]; *see Coelho v. City of New York,* 176 A.D.3d 1162, 112 N.Y.S.3d 270 [2 Dept., 2019]).

Here, although the defendants aver that discovery will allow them to establish a defense to the plaintiffs' case, they do not specify how this discovery will contest the facts submitted by plaintiffs. "[D]efendants failed to submit an affidavit from a person with personal knowledge of the facts so as to raise a triable issue of fact as to whether there was a nonnegligent explanation for the happening of this rear-end collision, or whether the plaintiff's culpable conduct contributed to the happening of the accident" (*Service v. McCoy*, 131 A.D.3d 1038, 16 N.Y.S.3d 283 [2 Dept., 2015]).

***Conclusion***

Accordingly, plaintiff's motion for summary judgment as to liability is granted. This constitutes the decision and order of this Court.

ENTER:

Hon. Lara J. Genovesi
J.S.C.

2020 OCT 15 PM 1:42
KINGS COUNTY CLERK
FILED

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