SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
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KEVIN LEITNER,

Plaintiff,

-against-

AARON AKABAS, LINDSAY BLANK, KENNETH BLANK, RYAN DELOUYA and SHARI DELOUYA,

Defendant.
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AMENDED DECISION & ORDER

Index No.: 30736/2019

(Motions# 1)

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

The following papers, numbered 1 through 6 , were considered in connection with Defendants Lindsay Blank and Kenneth Blank's Notice of Motion for an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting summary judgment and dismissal of Plaintiff's Complaint and all cross-claims against them:

PAPERS	**NUMBERED**
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF LINDSAY BLANK/EXHIBITS A-F	1-3
AFFIRMATION IN OPPOSITION BY DEFENDANT AKABAS/EXHIBITS A-B	4
AFFIRMATION IN OPPOSITION BY PLAINTIFF/EXHIBIT B	5
AFFIRMATION IN REPLY	6

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

This action was commenced by Plaintiff on February 6, 2019, with the filing of the Summons and Complaint through the NYSCEF system. Issue was joined as to Defendants Ryan Delouya and Shari DeLouya with the filing of Defendants' Answer through the NYSCEF system on March 14, 2019. Issue was joined with respect to Defendants Lindsay Blank and Kenneth Blank, by the filing of Defendants' Answer through the NYSCEF system on March 27, 2019.

Defendant Aaron Akabas filed an Answer on April 1, 2019.

The action arises from a five car accident which occurred on November 20, 2018, on State Highway 17, approximately .25 miles east of Exit 130A, in the town of Woodbury, County of Orange, New York, when the vehicle operated by Defendant Lindsay Blank, was struck in the rear of the vehicle owned by Defendant Ryan Deloya, causing a chain collision. In support of their motion, the Blank Defendants submit the affidavit of Lindsay Blank who avers that just prior to the accident, she was in bumper to bumper traffic in the right east-bound lane on Route 17. She states that the left lane was closed with orange roadwork signs. Ms. Blank states that just before the accident, she brought her vehicle to a stop with about 6-8 feet between the front of her vehicle and the rear of the Ford in front of her. She was stopped for about three seconds when a Kia being operated by Ryan Delouya hit the rear of her vehicle. As a result of the heavy impact, her vehicle was propelled forward and struck the stopped vehicle in front of her, operated by Aaron Akabas. The Akabas vehicle then struck the vehicle being operated by Plaintiff.

Moving Defendants contend that they are entitled to summary judgment with respect to this rear-end collision with a stopped vehicle. Plaintiff and co-defendant oppose the motion on the ground that it is pre-mature and discovery, including depositions, should be completed. They argue that they are entitled to cross-exam Defendant Lindsay Blank as to whether she was stopped or was in the process of stopping at the time of the occurrence.

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.

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).

Defendants Lindsay Blank and Kenneth Blank established their *prima facie* entitlement to summary judgment in their favor. Plaintiff and co-defendants have failed to demonstrate a triable issue of fact as to any negligence on the part of defendants Blank which caused or contributed to the accident. Whether Defendant Blank was completely stopped or in the process of stopping is irrelevant, as it is not disputed that she did not strike the vehicle in

front of her prior to contact with the rear of her vehicle.

Nor is there any merit to the 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). No such showing has been made here, as Plaintiff and co-defendants have failed to submit affidavits establishing a triable issue of fact as to Defendant Blank's negligent operation of her vehicle. As such, moving defendants are entitled to summary judgment in their favor.

Accordingly, it is hereby

ORDERED that Defendants Lindsay Blank and Kenneth Blank's Notice of Motion for Summary Judgment and dismissal of the action and any cross-claims is GRANTED in its entirety; and it is further

ORDERED that counsel for the remaining parties shall appear before the undersigned for a previously scheduled compliance conference on **JANUARY 16, 2020, at 9:45 a.m.**

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

Dated: New City, New York
January 16, 2020

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

To: All parties via NYSCEF