SHORT FORM ORDER

INDEX No. 611145/2019
CAL. No.

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 29 - SUFFOLK COUNTY

PRESENT:

HON. LINDA KEVINS
Justice of the Supreme Court

MOTION DATE 11/26/2019
ADJ. DATE 7/21/2020
Mot. Seq. # 001 - MG

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MELODY ZAMBRISKI,

Plaintiff,

- against -

BRENTWOOD DOOR CO. INC. and MERTON AMUSO

Defendants.

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Upon the following papers e-filed and read on this motion for summary judgment : Notice of Motion and supporting papers by plaintiff, dated October 29, 2020 ; Answering Affidavits and supporting papers by defendant, dated March 6, 2020 ; Replying Affidavits and supporting papers by plaintiff, dated March 12, 2020; Other ____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that plaintiff's motion for an order pursuant to CPLR 3212 (e) granting partial summary judgment in her favor on the issue of liability is granted; and it is further

ORDERED that counsel for the parties, and if a party has no counsel, then the party, are directed to appear before the Court in IAS Part 29, located at the Alan D. Oshrin Courthouse, One Court Street, Riverhead, New York 11901, on **December 15, 2020 at 9:30 a.m.**, for a Conference, or if the court is still operating remotely due to the COVID-19 health crisis, such appearance shall be held remotely on the same date by counsel. Counsel and any parties who are not represented by counsel shall, **with a copy to all parties, contact the court by email at Sufkevins@nycourts.gov at least one week prior to the date of the scheduled conference** to obtain the time and manner of such conference; and it is further

ORDERED that if this Order has not already been entered, plaintiff is directed to promptly serve a certified copy of this Order, pursuant to CPLR §§8019(c) and 2105, upon the Suffolk County Clerk who is directed to hereby enter such order; and it is further

ORDERED that upon Entry of this Order, plaintiff is directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on April 2, 2019 on Sunrise Highway near its intersection with Heckshire Spur in the Town of Islip. The accident allegedly happened when a vehicle owned by defendant Brentwood Door Company, Inc. and driven by defendant Merton Amuso collided with the rear of plaintiff's vehicle pushing it into the rear of a vehicle driven by nonparty David Lockamy.

Plaintiff now moves for partial summary judgment on the issue of liability, arguing that defendant negligently operated his motor vehicle and was the sole proximate cause of the accident. In support of the motion, plaintiff has submitted copies of the pleadings, a verified bill of particulars, a certified police accident report and her own affidavit.

In her affidavit, plaintiff states that on the date of the accident at approximately 4:00 p.m., she was traveling eastbound on Sunrise Highway/State Road 27 and brought her vehicle to a gradual stop due to traffic conditions. She states that her vehicle was completely stopped for three seconds behind a vehicle that was also stopped in traffic. Plaintiff states that suddenly, without warning, her vehicle was struck in the rear by a vehicle driven by defendant Merton Amuso causing the front of her vehicle to be pushed into the rear of a nonparty's vehicle.

The certified police accident report contains a statement by defendant Amuso, driver of vehicle number three which states: "he was driving left lane [sic] and could not stop in time striking Veh2 and pushing her into Vehicle."

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Once such a showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595).

When the driver of a vehicle approaches another vehicle 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 (***Tumminello v City of New York***, 148

AD3d 1084, 49 NYS3d 739 [2d Dept 2017]; ***Brothers v Bartling***, 130 AD3d 554, 13 NYS3d 202 [2d Dept 2015]; ***Gutierrez v Trillium USA, LLC***, 111 AD3d 669, 974 NYS2d 563 [2d Dept 2013]; ***Macauley v ELRAC, Inc***., 6 AD3d 584, 585, 775 NYS2d 78 [2d Dept 2003]). A rear-end collision with a stopped vehicle creates a prima facie case of negligence with respect to the operator of the rear vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision (***Tutrani v County of Suffolk***, 10 NY3d 906, 861 NYS2d 610 [2008]; ***Edgerton v City of New York***, 160 AD3d 809, 74 NYS3d 617 [2d Dept 2018]; ***Nowak v Benites***, 152 AD3d 613, 60 NYS3d 48 [2d Dept 2017]; ***Le Grand v Silberstein***, 123 AD3d 773, 999 NYS2d 96 [2d Dept 2014]).

In a chain-collision accident involving rear end collisions, the driver of the rear-most vehicle "bears a presumption of responsibility" (***Gustke v Nickerson***, 159 AD3d 1573, 72 NYS3d 733 [4th Dept 2018], quoting ***Ferguson v Honda Lease Trust***, 34 AD3d 356, 357, 826 NYS2d 10 [1st Dept 2006]). Furthermore, the operator of the middle vehicle that is propelled into the lead vehicle will not bear responsibility for the accident if the vehicle was properly stopped (***Morales v Amar***, 145 AD3d 1000, 44 NYS3d 184 [2d Dept 2016]; ***Niosi v Jones***, 133 AD3d 578, 19 NYS3d 550 [2d Dept 2015]; ***Raimondo v Plunkitt***, 102 AD3d 851, 958 NYS2d 460 [2d Dept 2013]).

Here, plaintiff's submissions, including her affidavit and defendant's admission contained in the certified police accident report (***Liu v Lowe***, 173 AD3d 946, 102 NYS3d 713 [2d Dept 2019]; ***Scott v Kass***, 48 AD3d 785, 851 NYS2d 649 [2d Dept 2008]), are sufficient to establish her prima facie case of entitlement to summary judgment in her favor on the issue of negligence (***Tsyganash v Auto Mall Fleet Mgt., Inc***., 163 AD3d 1033, 83 NYS3d 74 [2d Dept 2018]; ***Singh v Avis Rent A Car Sys., Inc***., 119 AD3d 768, 989 NYS2d 363 [2d Dept 2014]; ***Markesinis v Jaquez***, 106 AD3d 961, 965 NYS2d 363 [2d Dept 2013]). Therefore, the burden shifts to defendants to proffer evidence in admissible form raising a triable issue of fact (CPLR 3212 [b]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595).

Defendants oppose the motion on the grounds that it is premature as they have not conducted discovery. However, defendants fail to demonstrate that additional discovery may lead to relevant evidence or that facts essential to oppose the motion are exclusively within the knowledge and control of plaintiff (*see* CPLR 3212 [f]; ***Skura v Wojtlowski***, 165 AD3d 1196, 87 NYS3d 100 [2d Dept 2018]; ***Richards v Burch***, 132 AD3d 752, 18 NYS3d 87 [2d Dept 2015]; ***Suero-Sosa v Cardona***, 112 AD3d 706, 977 NYS2d 61 [2d Dept 2013]). The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process" is an insufficient basis for denying the motion (***Gasis v City of New York***, 35 AD3d 533, 534-535, 828 NYS2d 407, 409 [2d Dept 2006]; *see also* ***Dyer Trust 2012-1 v Global World Realty, Inc.***, 140 AD3d 827, 33 NYS3d 14 [2d Dept 2016]; ***Savage v Quinn***, 91 AD3d 748, 937 NYS2d 265 [2d Dept 2012]).

To defeat a motion for summary judgment, a party opposing such motion must lay bare his proof, in evidentiary form. Rather than submitting an affidavit by defendant Merton Amuso,

counsel merely submits his own affirmation. It is well settled that an affirmation of an attorney who lacks personal knowledge of the facts has no probative value (*see* ***Cullin v Spiess***, 122 AD3d 792, 997 NYS2d 460 [2d Dept 2014]). Counsel's argument that plaintiff failed to establish her prima facie case on the ground that she did not demonstrate she was free from fault is without merit, as a plaintiff in a negligence action is no longer required to show freedom from comparative fault to establish her prima facie entitlement to judgment as a matter of law on the issue of liability (*see* ***Rodriguez v City of New York***, 31 NY3d 312, 76 NYS3d 898 [2016]; ***Yassin v Blackman***, ___ AD3d ____, 2020 NY Slip Op 05090 [2 Dept 2020]).

Having failed to submit competent evidence sufficient to raise a triable issue of fact as to whether defendant has a nonnegligent explanation for the accident, plaintiff's motion for partial summary judgment on the issue of liability is granted.

Anything not specifically granted herein is hereby denied.

This constitutes the decision and Order of the Court.

LINDA KEVINS, JSC

Dated: 10/21/2020

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**