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

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EMILY PAGAN,

Plaintiff,

- against -

AUTOBAHN SERVICE CENTER, INC and MATTIAS S. WEBER,

Defendants.

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DECISION AND ORDER

Index No. 23702/2019E

John R. Higgitt, J.

Upon plaintiff's September 28, 2019 notice of motion and the affirmation and exhibits submitted in support thereof; defendants' December 10, 2019 affirmation in opposition; plaintiff's December 19, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability and for dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on May 25, 2017. In support of her motion, plaintiff submits the pleadings and her affidavit.

Plaintiff averred that at the time of the accident she was traveling in stop-and-go traffic on the Major Deegan Expressway when she had to come to a stop due to traffic, and her vehicle was struck in the rear by 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 nonnegligent 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 as to their liability. 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]).

Defendants argue 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]).

Defendants further assert that the motion is premature because depositions have not been

completed. This motion, however, is not premature because "the information as to why the defendants' 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]). Defendant Weber did not provide an affidavit in connection with this motion, and no reason was given for his failure to do so.

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.

As to the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing that she bears no such fault (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendants failed to raise a triable issue of fact, the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense alleging plaintiff's comparative fault is granted.

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking dismissal of defendants' first affirmative defense is granted and that defense is dismissed.

The parties are reminded of the February 28, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 24, 2020

John R. Higgitt, J.S.C.