SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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Helene Sorensen,

DECISION and ORDER
Index No. 22052/2019E

Plaintiff,

- against -

Zaza Kakashvili and Friendly Transit, Inc.,

Defendants.

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Ben R. Barbato, J.

Upon the foregoing papers, the motion of the plaintiff for summary judgment as to liability only is decided as follows:

This action arises out of a rear-end motor vehicle collision that occurred on September 4, 2018, at approximately 12:45 P.M., on Ardsley Road at the intersection with S. Central Avenue, Town of Greenburgh, County of Westchester.

Plaintiff moves for summary judgment as to liability only. Plaintiff relies on, inter alia, her own deposition testimony, in which she testified that she was at a full stop in the furthermost left-hand lane on Ardsley Avenue, waiting for the left turn signal, when she was struck in the rear by the defendants' vehicle. Plaintiff also relies on the police accident report which attributes the following statement to the defendant: "Driver of Vehicle #2 reports that traffic was stop and go and Vehicle #1 came to a sudden stop . . ."

In opposition, defendants rely on the deposition testimony of the defendant driver, Kakashvili. Kakashvili testified that the plaintiff's vehicle was actually in motion, and had begun to move forward into the intersection. Although plaintiff was in the left turn dedicated lane, her right turn signal was activated. Kakashvili further testified that plaintiff then brought her vehicle to a sudden stop for no apparent reason.

Drivers are required to maintain a reasonably safe rate of speed, maintain control over the vehicle, and to maintain a safe distance from the vehicle in front. (Vehicle and Traffic Law § 1129 [a]). When a rear end collision occurs, a presumption of negligence is established by proof that a stopped car was struck in the rear (*Stalikas v United Materials*, 100 NY2d 626, 801 NE2d 411, 769 NYS2d 191 [2003]). The presumption can be rebutted if the operator of the rear vehicle comes forward with an adequate non-negligent explanation for the accident (*Passos v MTA Bus Co.,* 129 A.D.3d 481, 481-482, 13 N.Y.S.3d 4, 5 [1st Dept. 2015].)

As a threshold matter, while defendant is correct that the statement of a police officer who did not witness the accident is hearsay, the police accident report is competent evidence to the extent that it contains the defendant driver's admissions. The report itself is certified. (*Welde v. Wolfson*, 32 A.D.2d 973 [2d Dept. 1969] [motor vehicle accident report which was certified was admissible].) A police accident report containing a party's admission against interest is competent evidence on summary judgment. (*Scott v. Kass*, 48 A.D.3d 785 [2d Dept. 2008] [police accident report contained a statement by the defendant that he had fallen asleep while driving and that his vehicle had crossed over a double yellow line into oncoming traffic and struck a telephone pole on the opposite side of the road; the statement was admissible as the admission of a party].)

In any event, a claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent and the stopped vehicle was not negligent (*Giap v Hathi Son Pham*, 159 A.D.3d 484, 485, 71 N.Y.S.3d 504, 506 [1st Dept. 2018]; *see Cabrera v Rodriguez*, 72 AD3d 553, 900 NYS2d 29 [1st Dept. 2010]; *Woodley v Ramirez*, 25 AD3d 451, 810 NYS2d 125 [1st Dept. 2006]; *Malone v Morillo*, 6 AD3d 324, 775 NYS2d 312 [1st Dept. 2004]). Here, the defendant claimed that plaintiff stopped suddenly. His testimony was entirely conclusory, as he provided no testimony as to the speed of his vehicle, the distance maintained from the plaintiff's vehicle, or the amount of time which elapsed after he

applied his brake to the time of the collision. "A conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle caused the accident is insufficient, in and of itself, to provide a nonnegligent explanation." (*Gutierrez v Trillium, USA, LLC*, 111 A.D.3d 669, 670 – 671 [2d Dept. 2013].)

"[V]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead." (*Shamah v Richmond County Ambulance Serv.*, 279 A.D.2d 564, 565 [2d Dept. 2001].) Defendant's statement as reflected in the police accident report that traffic was "stop and go" is an admission that the fact that the lead vehicle might stop was foreseeable.

Further, with respect to the allegation that the right hand signal was activated on the plaintiff's car, defendant made no such statement to the police. Even if he had, he did not testify that plaintiff was attempting to make a right hand turn at the time of the collision. Lastly, even if a trier of fact would speculate that the plaintiff decided to change lanes and turn right instead of left, as to which there is no evidence, the presence of a right turn signal would have alerted the defendant to maintain a safe distance.

Accordingly, it is hereby,

ORDERED that the motion is granted, and it is further

ORDERED that plaintiff is granted judgment as to liability only.

This is the Decision and Order of the Court.

Dated: 9/24/2020

Ben R. Barbato, J.S.C.