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 1st day of March 2021.

PRESENT:

HON. LARA J. GENOVESI,
J.S.C.

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MARIO ROSALES,

Index No.: 507204/2019

Plaintiff,

DECISION & ORDER

-against-

SIMON BOUHADANA and IRIS BOUHADANA,

Defendants.

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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	24, 25
Opposing Affidavits (Affirmations)	29
Reply Affidavits (Affirmations)	

Introduction

Plaintiff, Mario Rosales, moves by notice of motion, sequence number two, pursuant to CPLR § 3212, for summary judgment on the issue of liability and for such other relief as the court deems proper. Defendants, Simon Bouhadana and Iris Bouhadana, oppose this motion.

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Background

This action involves a motor vehicle accident that occurred on February 22, 2019 at approximately 11:24am. It occurred at the intersection of Bedford Avenue and Avenue M in Brooklyn, New York, which is controlled by a traffic signal. Plaintiff Mario Rosales ("Rosales") states by affidavit that his vehicle was stopped at the red control signal for approximately 15 seconds when his vehicle was struck in the rear by the defendant (*see* NYSCEF Doc. # 26, Rosales Aff., ¶ 4, 5).

Defendant Iris Bouhadana ("Bouhadana") states by affidavit that she was driving on Bedford Avenue and stopped behind plaintiff's vehicle, which was also stopped, at the red traffic control signal (*see* NYSCEF Doc. # 30, Iris Bouhadana Aff., ¶ 3). After the traffic control signal turned green, both vehicles began to move forward, when plaintiff came to a "sudden and abrupt stop," and defendant's vehicle struck plaintiff's vehicle in the rear (*see id.* at ¶ 4-7).

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 N.Y. Slip Op. 02287]). 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, 808, 79 N.Y.S.3d 227 [2 Dept., 2018]).

In the case at bar, plaintiffs met the prima facie burden showing of entitlement to judgment as a matter of law. Both the plaintiff's and the defendant's affidavits demonstrate that the vehicle operated by Rosales was struck in the rear by the vehicle operated by Bouhadana. Both plaintiff and defendant contend that plaintiff's vehicle was at a complete stop at the time of the accident, and defendant admits to striking the rear of plaintiff's vehicle with the front of his vehicle. Plaintiff demonstrated that he was not negligent in the happening of the accident. Plaintiff has further established that the actions of defendant driver 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*; *see also 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. Defendants contend that plaintiff's affidavit is insufficient to meet their burden herein because it is self-serving; this is unavailing (*see generally* CPLR 3212(b)). Defendants further contend that the motion is premature because the parties have not been deposed. However, "[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 [2d Dept., 2013] [internal citations omitted]; *see Coelho v. City of New York*, 176 A.D.3d 1162, 112 N.Y.S.3d 270 [2d Dept., 2019]). Here, the defendants do not specify how further discovery will contest the facts submitted

by plaintiff. "[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. McVoy*, 131 A.D.3d 1038, 16 N.Y.S.3d 283 [2 Dept., 2015]).

Further, defendant contention that plaintiff suddenly stopped his vehicle prior to the accident, does not constitute a nonnegligent explanation for defendant striking the rear of plaintiff's vehicle with his (*see Baron v. Murray*, 268 A.D.2d 495, 702 N.Y.S.2d 354 [2 Dept., 2020]). Defendant was "under a duty to maintain a safe distance" between her vehicle and plaintiff's vehicle, and the "failure to do so, in the absence of an adequate, nonnegligent explanation, constituted negligence as a matter of law" (*see Silberman v. Surrey Cadillac Limousine Serv.*, 109 A.D.2d 833, 486 N.Y.S.2d 357 [2 Dept., 1985]).

Conclusion

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

ENTER:

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J.S.C.

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