SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **62**

Justice

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MARCOS VELEZ, AMALIA HERRERA,

Plaintiffs,

- v -

CESAR TRINIDAD, THE CITY OF NEW YORK,

Defendants.

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INDEX NO. 156732/2018

MOTION DATE 05/13/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44

were read on this motion to/for JUDGMENT - SUMMARY.

This personal injury action arises from a motor vehicle accident, involving a rear-end collision, which occurred on October 31, 2017, at approximately 8:45 A.M., in front of 335 East 27th Street in the County of New York, City and State of New York.

Pending now before the court is a motion filed by plaintiffs seeking summary judgment on liability, pursuant to CPLR § 3212, on the basis that there are no issues of fact requiring a jury trial. Upon the foregoing documents, this motion is GRANTED.

Standard for Summary Judgment

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [Sup. Ct. App. Div. 1st Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment

as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [Sup. Ct. App. Div. 1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

The 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, and failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, 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 [N.Y. Ct. of Appeals 1986]).

Further, pursuant to the New York Court of Appeals, "We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (Zuckerman v City of New York, 49 NY2d 557 [N.Y. Ct. of Appeals 1980]).

Instant Motion

Plaintiff MARCOS VELEZO was the operator of a motor vehicle in which plaintiff AMALIA HERRERA was a passenger. Plaintiffs' contend that plaintiffs' vehicle was stopped, for approximately 60 seconds, at a stop sign on Mount Carmel Place, when the defendants' vehicle, driven by defendant Cesar Trinidad (the "Driver") and owned by defendant The City of New York, rear-ended the plaintiffs' vehicle. In support of their motion, plaintiffs attach the transcripts of the plaintiffs' respective EBTs (NYSCEF Documents # 32 and 33), as well as a copy of the Police Accident Report (the "Police Report") (NYSCEF Document #35) of the subject incident. The Police Report states, in part:

> AT TPO VI STATES WAS STOPPED AT A STOP SIGN ON MOUNT CARMEL PLACE WHEN V2 REAR ENDED HIM CAUSING DAMAGE. V2 STATES WEILE TRAVELING S/B ON MOUNT CARMEL PLACE HIS FOOT SLIPPED ON THE BREAK CAUSING V2 TO COLLIDE INTO V1. NO INJURIES

Plaintiffs argue that it is a well-established principle that a rear-end collision is sufficient to create a *prima facie* case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle. They argue that there is no non-negligent explanation for the happening of the accident at issue, and hence, summary judgment is warranted.

Defendants (referred to collectively herein as the "City") oppose the motion and argue, first, that plaintiffs cannot rely on the Police Report, as it constitutes hearsay and is not in evidence. Second, the City questions whether plaintiffs have met the necessary threshold with respect to injury, as the Police Report states that there were "no injuries," and the City has yet to receive all of the plaintiffs' medical records. Lastly, the City argues that this motion is premature, as "written discovery has just begun" and the City Driver has not yet been deposed.

Conclusions of Law

As plaintiffs properly argue, it is a well-established principle that a rear-end collision is sufficient to create a *prima facie* case of liability and imposes a duty of explanation with respect to the operator of the offending vehicle. *See e.g.* Rodriguez v. Sharma, 178 A.D.3d 508 (Sup. Ct. App. Div. 1st Dept. 2019) (holding that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence on the part of the operator of the moving vehicle unless the operator presents evidence sufficient to rebut the inference of negligence. A sudden stop of the front vehicle is a non-negligent explanation for a rear-end collision); Agramonte v. City of New York, 288 A.D.2d 75 (Sup. Ct. App. Div. 1st Dept. 2001) (finding that plaintiff's sudden stop was insufficient to rebut the presumption of negligence since defendants failed to offer a non-negligent explanation for the happening of the accident); Morales v. Consol. Bus Transit, Inc., 167 A.D.3d 457 (Sup. Ct. App. Div. 1st Dept. 2018) (concluding that the driver's excuse for rear-ending a bus, namely, that the bus made a sudden stop, mid-block, is insufficient to rebut the presumption of negligence); Morgan v. Browner, 138 A.D.3d 560 (Sup. Ct. App. Div. 1st Dept. 2016) (claiming that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the rear driver); Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (upholding the principle that drivers must maintain safe distances between their cars and cars in front of them and that drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident . . . even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; … and when the front car stopped after having changed lanes").

Here, the City does not proffer a non-negligent explanation for the accident, or even submit an affidavit from the defendant Driver concerning his account of the incident. Although the City

questions the reliability of the Police report, the City neither disputes the version recorded in the report nor does the City dispute the account given by plaintiffs in their EBTs. At minimum, the City could have submitted an affidavit from the Driver. However, the City failed to do so, leaving only the plaintiffs' undisputed account of events on this record.

With respect to the City's concern that plaintiffs reply on the Police Report, the court notes that plaintiff had submitted not only said report, but also the transcripts of the EBTs of both plaintiffs. Further, if the City disputed the versions of the facts offered in the plaintiff's EBTS, or in the Police Report, the City could have submitted an Affidavit from the Driver. Indeed, the City failed to even include a counterstatement of facts in compliance with the provisions of §202.8g of the Uniform Rules of the Trial Court regarding Statements of Material Facts. Because the City failed to do so, plaintiffs' version of the facts is undisputed on this record.

With respect to the City's argument that plaintiffs' motion is premature, this court finds that further discovery is not required, in light of the undisputed facts and in application of the law as stated above. *See e.g.* Johnson v. Phillips, 261 A.D.2d 269 (Sup. Ct. App. Div. 1st Dept. 1999) (applying the law to the essential facts as asserted by defendant and upholding the trial court's finding that the defendant's failure to raise any factual issues to absolve him of liability defeated the need for discovery. Since the defendant is the party with knowledge of the factual circumstances as to how he collided with the front vehicle, discovery would serve no purpose); Soto-Maroquin v. Mellet, 63 A.D.3d 449 (Sup. Ct. App. Div. 1st Dept. 2009) (finding defendant's argument that summary judgment was prematurely granted prior to plaintiff's deposition unavailing, whereas here, defendant's passenger provided no information concerning road conditions other than plaintiff's alleged sudden stop and the defendant driver is the party with knowledge of any non-negligent reasons for the accident); Jeffrey v. DeJesus, 116 A.D.3d 574

(Sup. Ct. App. Div. 1st Dept. 2014) (concluding that the trial court erred in denying, as premature, plaintiff's motion for partial summary judgment on the issue of liability where plaintiff driver averred that the accident at issue occurred when defendant's vehicle struck the back of the vehicle she was operating).

For all the aforementioned reasons, it is hereby:

ORDERED that this motion is GRANTED and plaintiffs are awarded summary judgment on the issue of liability.

This is the Decision and Order of this court.

11/12/2021
DATE

J. MACHELLE SWEENING, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE