Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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DARRELL THACKROODEEN,

Action 1
Index No.: 710669/18

Plaintiff(s),

Motion Date: 10/5/21

- against -

Motion Cal. No.: 41

Motion Seq. No.: 04

JUAN DAVID VELEZ-RAMIREZ,
W. GONZALEZ-RAMIREZ and
VICKRAM THACKROODEEN,

Defendant(s).

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VICKRAM THACKROODEEN,

Action 2
Index No.: 710714/18

Plaintiff(s),

- against -

JUAN DAVID VELEZ-RAMIREZ and
W. GONZALEZ-RAMIREZ,

Defendant(s).

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The following papers numbered 1 - 8 read on this motion in Action 1 by defendant Vickram Thackroodeen, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross-claims as to him.

	PAPERS NUMBERED
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Service.....	5 - 6
Reply Affirmation-Service.....	7 - 8

Upon the foregoing papers, it is **ORDERED** that the above-referenced motion is decided as follows:

These related personal injury actions arise from an alleged motor vehicle accident which occurred on July 15, 2015 at or near the intersection of Broadway and Roebling Street, County of Kings, City and State of New York. In Action 1, it is alleged that plaintiff Darrell Thackroodeen, who was a passenger in the motor vehicle driven by defendant Vickram Thackroodeen, was injured when their vehicle was struck by the motor vehicle owned and operated by defendants W. Gonzalez-Ramirez and Juan David Velez-Ramirez, respectively. Vickram Thackroodeen commenced Action 2, seeking to recover against Gonzalez-Ramirez and Velez-Ramirez for his own personal injuries. By order entered December 7, 2020, this court ordered both actions consolidated solely for the purpose of a joint trial.

In Action 1, defendant Vickram Thackroodeen (hereafter, "the movant") now moves for summary judgment to dismiss the complaint and all cross-claims as against him. Defendants Gonzalez-Ramirez and Velez-Ramirez (hereafter, "the opposing defendants") oppose the motion, while plaintiff has not responsive papers.

Summary judgment is a drastic remedy that will be granted only if the movant has demonstrated, through submission of evidence in admissible form, the absence of any material issues of fact (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]), and has affirmatively established the merit of his or her cause of action or defense (*see Zuckerman v New York*, 49 NY2d 557, 562 [1980]). A failure to make a *prima facie* showing of entitlement to judgment as a matter of law "requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If a movant makes the *prima facie* showing, the burden then shifts to the non-movant to raise a material issue of fact requiring a trial (see id). Courts must view the evidence in the light most favorable to the non-movant (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]), and draw all reasonable inferences in his or her favor (*see Haymon v Pettit*, 9 NY3d 324, 327, n* [2007]).

The movant argues that the opposing defendants, as the owner and operator of the trailing vehicle in a rear-end collision, were negligent as a matter of law, and, thus, solely at fault for the accident. "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Billis v Tunjian*, 120 AD3d 1168, 1169 [2d Dept 2014]; *see also* VTL § 1129[a]). Hence,

> "[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"

(*Orellana v Maggies Paratransit Corp.*, 138 AD3d 941, 941 [2d Dept 2016]).

In support of summary judgment, the movant submits, *inter alia*, certified transcripts of his and defendant Velez-Ramirez's depositions, and a personal affidavit from plaintiff.[1] The movant testified that he had been driving in heavy traffic on Broadway, when he stopped behind two other vehicles at the Roebling Street intersection. He estimated that his vehicle had been stopped for approximately one minute when he felt a heavy impact to the rear, which he later knew was caused by the opposing defendants' vehicle. In his affidavit, plaintiff attested to a similar account. Mr. Velez-Ramirez testified that he had been driving approximately 10 to 15 miles per hour before he struck the rear of the vehicle directly in front of him, which he claimed stopped suddenly. He could not remember if he had seen the other vehicle's brake lights, but he applied his own brakes hard in an attempt to avoid the collision. Mr. Velez-Ramirez testified that while the other vehicle had been going approximately the same speed as his, it was stopped at the moment of impact. According to Mr. Velez-Ramirez, the traffic was "bumper-to-bumper," and he had been maintaining an approximately three-foot distance between him and the other vehicle before the accident.

The movant's submissions adequately establish defendant Velez-Ramirez's *prima facie* negligence in driving into the rear of the movant's vehicle. Hence, the burden now shifts to the opposing defendants to provide a non-negligent explanation for the collision (*see Pierre v Demoura*, 148 AD3d 736, 737 [2d Dept 2017] [holding that the driver of a rear-ended vehicle met his summary judgment burden by "demonstrat(ing) that as he was slowing for a stopped vehicle in front of him, his vehicle was struck in the rear by the defendants' vehicle, and that he was not comparatively negligent in the happening of the accident."]; *see also Orellana*, 138 AD3d at 941; *Billis*, 120 AD3d at 1169).

The opposing defendants first argue that this motion must be denied due to the February 14, 2019 decision and order issued by the Honorable Bruce M. Balter, *J.S.C.*, in Action 2, denying a motion by the movant, who is the plaintiff in Action 2, for summary judgment against them on the issue of liability for causing the accident. They argue that denial of the instant motion is warranted because in denying the prior motion Justice Balter has already found that triable issues of fact exist as to liability between

[1]The court did not consider the police accident report submitted with the movant's papers, as it is uncertified, and, therefore, not in admissible form (*see Zuckerman*, 49 NY2d at 562 [proponent of summary judgment bears a "strict requirement" to "tender () evidentiary proof in admissible form"]).

these parties. However, in so holding, Justice Balter directed the parties to "continue with discovery." The court also notes that Justice Balter's order was issued several months before the party depositions discussed above had occurred, and more than two years before the instant plaintiff's affidavit was proffered in support of this motion. It, thus, appears that the lack of any meaningful discovery at the time of the prior motion in Action was central to Justice Balter's conclusion that triable issues of fact precluded summary judgment. Since the record has been significantly developed over the past two-and-a-half years, the opposing defendants' reliance on Justice Balter's findings is misplaced.[2]

The opposing defendants also argue that the record raises triable issues of fact as to liability due to Mr. Velez-Ramirez's testimony that the movant had stopped short. "A nonnegligent explanation [for a rear-end collision] may include evidence of [] a sudden stop of the vehicle ahead, [] or any other reasonable cause" (*Ramos v TC Paratransit*, 96 AD3d 924, 925 [2d Dept 2012]). However,

> "vehicle 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"

(*Brothers v Bartling*, 130 AD3d 554, 556 [2d Dept 2015]). Hence, "[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" (*id*). As discussed above, both drivers testified that the traffic was heavy, and Mr. Velez-Ramirez even characterized it as "bumper-to-bumper." Hence, even if the movant's vehicle did suddenly stop, as Mr. Velez-Ramirez claims, on these facts that would constitute a stop which was foreseeable under the prevailing traffic conditions, such that Mr. Velez-Ramirez should have maintained a safe enough distance in anticipation of same (*see id; cf. Etingof v Metro. Laundry Mach. Sales, Inc.*, 134 AD3d 667, 668 [2d Dept 2015] [triable issue of fact as to lead vehicle operator's negligence in causing or contributing to rear-end collision, where vehicle suddenly stopped short for no apparent reason, with no traffic in front of it]).

The moving defendants also argue that summary judgment should be denied because very little discovery has occurred in Action 1, including the deposition of the instant plaintiff. However, the other parties were deposed in Action 2 regarding the same accident,

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[2]The court rejects the moving defendants' contention that the instant motion by the movant is really, in effect, one to renew his previous motion made in Action 2 before Justice Balter.

and plaintiff has submitted an affidavit recounting his version of the incident. The opposing defendants have already relied on Mr. Velez-Ramirez's deposition testimony in opposition to this motion, and they have provided no non-speculative basis to conclude that further discovery would lead to other potential evidence which would tend to provide a non-negligent explanation for his rear-ending of the movant's vehicle, or show that any other party's conduct contributed to causing the accident.

Accordingly, the above-referenced motion in Action 1 by defendant Vickram Thackroodeen for summary judgment dismissing the complaint and all cross-claims as to him is **GRANTED** in its entirety.

The foregoing shall constitute the decision and order of this court.

Dated: November 9, 2021

JANICE A. TAYLOR, J.S.C.

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