SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JONATHAN LANGSAM,

Plaintiffs,

-against-

GUSTAVO GASPAR, CLAUDIA GASPAR, LEONARD CRAWFORD, & GRACE ARENHOLZ,

Defendants.

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Index No.: 60545/2019

DECISION & ORDER

Motion Seq. Nos. 1, 2, 3

Hubert, J.S.C.

This is an action for personal injuries sustained by Plaintiff Jonathan Langsam as a result of a motor vehicle accident that occured on August 5, 2018, at approximately 4:35 p.m. on Route 9A near the intersection of North State Road in Briarcliff Manor, New York. Plaintiff alleges that he was driving his 2015 Subaru in the southbound lane of Route 9A at that time when he observed a car in the northbound lane driving erratically. Plaintiff further alleges that a car in front of him came to a stop, at which time Plaintiff also brought his vehicle to a complete stop. Plaintiff states that he was stopped for five to seven seconds when his vehicle was hit from behind by a vehicle being operated by Defendant Gustavo Gaspar (for purposes of this motion, "Gaspar"), and owned by Defendant Claudia Gaspar. There were also two additional collisions involving vehicles following in the southbound lane: a vehicle operated by Defendant Grace Arenholz struck a vehicle operated by Defendant Leonard Crawford, which in turn rear-ended Defendant Gaspar's vehicle.

In Motion Sequence No. 1, Plaintiff moves for partial summary judgment pursuant to CPLR § 3212 on the issue of liability against Defendants Gustavo Gaspar and Claudia Gaspar. In Motion Sequence No. 2, Defendant Grace Arenholz moves for summary judgment against

Plaintiff to dismiss the complaint as asserted against her. In Motion Sequence No. 3, Defendant Leonard Crawford also moves for summary judgment dismissing this action against him on the grounds that no negligence on his part caused or contributed to the happening of the accident.

Motion Sequence No. 1

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). The parties' competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets its burden, the burden shifts to the non-moving party to establish, through admissible evidence, the existence of disputed issues of material fact for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions. *Id.* Instead, the opponent of a motion must lay bare affirmative proof sufficient to establish that real defenses exist warranting a trial. Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue of fact, but "only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment." *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231, 413 N.Y.S.2d 141 (1978).

"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." *Nsiah-Ababio v. Hunter*, 78 A.D.3d 672, 913 N.Y.S.2d 659, 672 (2d Dep't 2010); *see* VTL § 1129 (a)("The 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 also see* PJI 2:82 (a motorist is required to drive his or her car at a sufficient distance behind the car ahead so as to be able to stop without striking the car ahead when the car in front is stopped with due care).

Evidence of a rear-end collision with a stopped or stopping vehicle therefore constitutes a prima facie case of negligence on the part of the operator of the rear vehicle, requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision. *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610 (2008). Additionally, "[w]hile a non-negligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, vehicle stops which are foreseeable under the prevailing traffic conditions 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 vehicle and the vehicle ahead." *Waide v. ARI Fleet, LT*, 143 A.D.3d 975, 39 N.Y.S.3d 512 (2d Dep't 2016); *see Tumminello v. City of New York*, 148 A.D.3d 1084, 49 N.Y.S.3d 739 (2d Dep't 2017). A plaintiff is no longer required to show freedom from comparative fault to establish her or his prima facie entitlement to judgment as a matter of law on the issue of liability. *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 (2018).

In support of Motion Sequence No. 1, Plaintiff has submitted, *inter alia*, a copy of the pleadings, including the bill of particulars, a certified copy of the police accident report, a sworn affidavit of Plaintiff Jonathan Langsam, and photographs depicting property damage sustained to Plaintiff's vehicle. In his affidavit, Plaintiff states, in relevant part:

> On August 5, 2018, I was operating a motor vehicle that was involved in an accident in the southbound lane of Route 9A, after the intersection of North State Road, in Briarcliff Manor, New York. As I was driving, I noticed an erratic driver in the

> northbound lane. Specifically, a car in the northbound lane looked like it was going to hit the guardrail that separated the northbound lane from the southbound lane. As a result of the erratic driver, the car in front of me came to a complete stop, and I brought my vehicle to a complete stop as well. Traffic conditions were medium, and I was travelling with the traffic at about 30 miles per hour prior to applying my brakes to bring my car to a stop.

Plaintiff has also submitted the deposition transcript of Gustavo Gaspar. Gaspar testified that he was driving on Route 9A approximately two car lengths behind Plaintiff's vehicle, travelling approximately 30 miles per hour, and no faster, as he was "just at a red light about two hundred feet before." He further testified that Plaintiff's vehicle came to an abrupt stop and as he saw the brake lights come on, he hit his brakes, but nonetheless collided with Plaintiff's vehicle. He further testified:

> I was driving a Path Finder, so I'm - - I'm pretty high above the road and I can see right over the car, I can see that there was no - - no vehicle in front of him. There was no obstacle in the way. There was nothing in the road. There was no reason for him to stop.

As noted above, the failure to maintain a safe distance between two vehicles, in the absence of an adequate non-negligent explanation, is negligence as a matter of law. Additionally, a claim of a sudden and unexpected stop by the leading car, standing alone, is insufficient to create a triable issue of fact. *See, e.g., Catanzaro v. Edery*, 172 A.D.3d 995, 101 N.Y.S.3d 170 (2d Dep't 2019). Here, however, while it is undisputed that Plaintiff's vehicle was struck in the rear while stopped on the roadway (thereby raising an inference of Gaspar's negligence), Plaintiff's own motion papers present a triable issue of fact--through the submission of Defendant Gaspar's deposition testimony--as to whether Plaintiff was negligent in the happening of the subject accident. *See, e.g., Richter v. Delutri*,166 A.D.3d 695, 87 N.Y.S.3d 185 (2d Dep't 2018)(evidence that the plaintiff's vehicle came to an abrupt stop when there was no

vehicular traffic in front of it on the exit ramp, and the two vehicles collided, presented a triable issue of fact as to whether the defendant driver was negligent in the happening of the accident); *Etingof v. Metropolitan Laundry Mach. Sales, Inc.*, 134 A.D.3d 667, 20 N.Y.S.3d 589 (2d Dep't 2015)(defendants raised a triable issue of fact as to whether plaintiff contributed to the rear-end collision through evidence that defendant was driving 15 miles per hour, approximately 25 yards from plaintiff's vehicle, and when the light turned green, plaintiff accelerated safely through the intersection but then suddenly stopped short "for no apparent reason," as there was no traffic for fifty yards in front plaintiff's vehicle); *Salako v. Nassau Inter-County Express*, 131 A.D.3d 687, 15 N.Y.S.3d 444, 445 (2d Dep't 2015)(question of fact whether driver of car, rear-ended by bus, was at fault when bus driver averred that collision occurred because the driver of the car had abruptly and unexpectedly stopped his vehicle in roadway with no warning and for no apparent reason, as traffic was moving well and nothing was blocking its progress); *Kertesz v. Jason Transp. Corp.*, 102 A.D.3d 658, 957 N.Y.S.2d 730 (2d Dep't 2013)(defendants raised triable issue of fact in opposition to plaintiff's prima facie showing as to whether plaintiff negligently caused or contributed to the accident through affidavit alleging that plaintiff's vehicle stopped suddenly and without warning approximately 40 to 50 feet from the nearest intersection, despite the fact that there was no traffic in front of that vehicle).

Here, Plaintiff's motion for summary judgment is denied as there is a triable issue of fact as to the happening of the accident. Since Plaintiff has not established his prima facie entitlement to judgment as a matter of law, the Court does not address the sufficiency of the opposition papers submitted by Defendants Gustavo and Claudia Gaspar.

Motion Sequence No. 2

In Motion Sequence No. 2, submitted without opposition, Defendant Grace Arenholz

moves for summary judgment on the issue of liability. In support of her motion, Arenholz states that she was also traveling southbound on State Route 9A in the Village of Briarcliff Manor when the subject accident occurred, but at no time did her vehicle collide with Plaintiff's vehicle or otherwise put in motion any vehicle or instrumentality that subsequently came into contact with Plaintiff's vehicle. Inasmuch as Plaintiff has testified under oath that he was involved in a single collision when his vehicle was struck in the rear by Defendant Gaspar, the fact that the Arenholz vehicle rear-ended the Crawford vehicle is not the proximate cause of Plaintiff's injuries. Accordingly, Plaintiff has established, prima facie, that she is free from negligence in this case, and is entitled to summary judgment dismissing Plaintiff's complaint insofar as asserted against her.

Motion Sequence No. 3

In Motion Sequence No. 3, Defendant Leonard Crawford also moves for summary judgment dismissing this action against him on the grounds that no negligence on the part of Crawford caused or contributed to the happening of the accident from which this lawsuit arises.

As noted above, after Gaspar collided with Plaintiff's vehicle, a vehicle operated by Defendant Grace Arenholz struck the vehicle operated by Defendant Leonard Crawford, which in turn rear-ended Defendant Gaspar's vehicle. However, Plaintiff was involved in a single collision when his vehicle was struck in the rear by Defendant Gaspar.

In support of his motion, Crawford has submitted, *inter alia*, a duly sworn affidavit. In his affidavit, Crawford states that he was operating his 2012 Volkswagen southbound in the left lane of Route 9A in Briarcliff Manor. As he approached a traffic light, he saw a car in front of him brake, and the vehicle in front of him was involved in a collision. Crawford further states that he immediately applied his brakes and came to a stop behind the first two cars, and while

stopped, he heard a screeching sound behind him, and a vehicle struck his stopped vehicle in the rear, pushing his vehicle into the vehicle in front of him (the Gaspar vehicle).

In opposition, Defendants Gustavo and Claudia Gaspar argue that Crawford's assertion that he was completely stopped at the time of the accident "is not an established fact." In support of this argument, they point to the police accident report submitted by Crawford which states that after Craword observed the accident in front of him, "he began to slow down when his car was struck in the rear by [the Arenholz vehicle] causing his vehicle to be pushed forward and strike [the Gaspar vehicle]."

Nevertheless, it is a well-settled principle that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the driver of the moving vehicle. *Diamond v. Comins*, 2021 N.Y. App. Div. LEXIS 3162, 2021 N.Y. Slip. Op. 03019 (2d Dep't May 12, 2021). A driver's failure to maintain a safe distance, in the absence of a non-negligent explanation, constitutes negligence as a matter of law. Whether the lead vehicle is completely stopped, or in the process of stopping, is not material to the issue of liability. *See, e.g, Xian Hong Pan v. Buglione*, 101 A.D.3d 706, 955 N.Y.S.2d 375 (2d Dep't 2012).

Accordingly, it is hereby:

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability is DENIED (Sequence #1); and it is further

ORDERED, that Defendant Grace Arenholz' motion for summary judgment to dismiss the complaint insofar as asserted against her is GRANTED (Sequence #2); and it is further

ORDERED, that Defendant Leonard Crawford's motion for summary judgment to dismiss the complaint insofar as asserted against him is GRANTED (Sequence #3); and it is further

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry within thirty days.

The foregoing constitutes the Decision & Order of this Court.

Dated: White Plains, New York
May 18, 2021

Hon. James W. Hubert
Supreme Court Justice