| **Salmon v Patel** |
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| 2022 NY Slip Op 32314(U) |
| July 4, 2022 |
| Supreme Court, Bronx County |
| Docket Number: Index No. 30431/2019E |
| Judge: Veronica G. Hummel |
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**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF BRONX, IAS PART 31**

PESKEY A. SALMON,

Plaintiff,

-against-

PAVEN K. PATEL and KALPESH PATEL,

Defendants.

**Index No. 30431/2019E**

**HON. VERONICA G. HUMMEL, A.J.S.C.**

**Mot. Seq. No. 2**

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in support of and in opposition to plaintiff PESKEY A. SALMON's ("Plaintiff") motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting him summary judgment as to liability against defendants PAVEN K. PATEL ("Defendant Driver") and KALPESH PATEL ("Defendant Owner"; and, together with Defendant Driver, "Defendants") and dismissing Defendants' First, Eleventh, Twelfth, Fifteenth, Sixteenth, Seventeenth, and Eighteenth Affirmative Defenses alleged in the Verified Answer to Amended Complaint, dated July 23, 2020.

This is a personal-injury action arising out of a multi-vehicle rear-end accident that occurred on July 27, 2018, at approximately 8:00 a.m., on a service road leading to the Belt Parkway in Queens, New York (the "Accident"). The Accident involved three vehicles. The lead vehicle was driven by a nonparty to this action, Inna Isakova. The middle vehicle was driven by Plaintiff, and the rear-most vehicle was driven by Defendant Driver. It is undisputed that Defendant Driver rear-ended Plaintiff, who had come to a stop in reaction to the lead vehicle coming to a stop.

In support of the motion, Plaintiff submits an attorney affirmation, a statement of material facts, copies of the pleadings, copies of the transcripts of Plaintiff's and Defendant Driver's depositions, and a copy of the police accident report. Because the police accident report is not certified, however, the Court cannot consider it as competent evidence in deciding the motion. *Yassin v. Blackman*, 188 A.D.3d 62 (2nd Dep't 2020); *Dong v. Cruz-Marte*, 189 A.D.3d 613 (1st Dep't 2020); *Coleman v. Maclas*, 61 A.D.3d 569, 569 (1st Dep't 2009).

In opposition to the motion, Defendants submit only an attorney affirmation. Defendants did not include in their opposition papers a Statement of Material Facts corresponding to Plaintiff's

Statement of Material Facts, as required by Uniform Trial Court Rule 202.8-g(b). 22 NYCRR 202.8-g (eff. Feb. 1, 2021). Consequently, under Rule 202.8-g(c), each fact stated in Plaintiff's Statement of Material Facts is deemed admitted.

The relevant, admitted—and thus undisputed—facts are as follows: On July 27, 2018, at approximately 8:00 a.m., Plaintiff exited the Van Wyck Expressway and proceeded to travel on the single-lane service road toward the entrance ramp leading to the Belt Parkway. Traffic at the time was busy and heavy; the weather was sunny and warm; and the roads were dry.

On the service road, Plaintiff was driving behind a red vehicle, which, for unknown reasons, came to a stop. Plaintiff, in turn, brought his vehicle to a stop without striking the red vehicle. Plaintiff then heard a screeching of tires and felt a forceful impact to the rear of his vehicle. As a result of the impact, Plaintiff's vehicle was pushed forward, striking the rear of the lead red vehicle. The vehicle that had rear-ended Plaintiff's vehicle was driven by Defendant Driver with the knowledge and permission of Defendant Owner, to whom the vehicle was leased. Defendant Driver was approximately less than two car lengths from Plaintiff's vehicle when Defendant Driver observed Plaintiff's brake lights illuminate, and he was unable to bring his vehicle to a stop before striking Plaintiff's vehicle's rear bumper.

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case." *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). A plaintiff in a negligence action moving for summary judgment on the issue of liability must, therefore, establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Fernandez v. Ortiz*, 183 A.D.3d 443 (1st Dept 2020). A plaintiff is not required, however, to demonstrate his or her freedom from comparative fault in order to establish a *prima facie* entitlement to summary judgment on the issue of liability. *Rodriguez v. City of N.Y.*, 31 N.Y.3d 312, 324-25 (2018). Upon the required showing, the burden then shifts to the nonmovant to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v. Metro. Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). "On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 (2012).

It is well settled that "[a] rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the driver of the rear vehicle, and imposes a duty

on the part of the operator of the moving vehicle to come forward with an adequate, nonnegligent explanation for the accident." *Urena v. GVC Ltd.*, 160 A.D.3d 467, 467 (1st Dep't 2018) (quoting *Matos v. Sanchez*, 147 A.D.3d 585, 586 (1st Dep't 2017)); *Santos v. Booth*, 126 A.D.3d 506, 506 (1st Dep't 2015); *Woodley v. Ramirez*, 25 A.D.3d 451, 452 (1st Dep't 2006). Under New York Vehicle and Traffic Law ("VTL") § 1129(a), "a 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 vehicle and traffic upon the condition of the highway." In other words, a driver must maintain a safe distance between his vehicle and the one in front of her. A violation of VTL § 1129(a) is *prima facie* evidence of negligence, and "[t]his rule has been applied when the front vehicle stops suddenly in slow-moving traffic." *Rodriguez v. Budget Rent-A-Car Sys., Inc.*, 44 A.D.3d 216, 223-24 (1st Dep't 2007) (quoting *Johnson v. Phillips*, 261 A.D.2d 269, 271 (1st Dep't 1999)); *Mascitti v. Greene*, 250 A.D.2d 821, 822 (2d Dep't 1998). In a rear-end collision, there is a presumption of non-negligence of the driver of the lead vehicle. *See Soto-Maroquin v. Mellet*, 63 A.D.3d 449, 450 (1st Dep't 2009).

Based on the submissions, Plaintiff has established *prima facie* entitlement to judgment as a matter of law by submitting evidence that he had come to a complete stop in reaction to the vehicle in front of him coming to a complete stop when he was struck in the rear by Defendants' vehicle.

Defendants, in turn, have failed to come forward with an adequate non-negligent explanation for the accident. Defendants argue that there is a question of fact as to whether Plaintiff slowly came to a stop or stopped suddenly. But this dispute, even if genuine, concerns an immaterial fact. First Department caselaw is clear that a claim by the rear driver 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. *Ly Giap v. Hathi Son Pham*, 159 A.D.3d 484, 485 (1st Dep't 2018); *Bajrami v. Twinkle Cab Corp.*, 147 A.D.3d 649 (1st Dep't 2017); *Santos*, 126 A.D.3d at 506; *Soto-Maroquin*, 63 A.D.3d at 450; *Woodley*, 25 A.D.3d at 452; *see also Earl v. Hill*, 2021 N.Y. Slip Op. 06948 (1st Dep't Dec. 14, 2021). Thus, even accepting, *arguendo*, that Plaintiff stopped suddenly, that fact would be insufficient to rebut the presumption that Defendant Driver's actions were the negligent cause of the Accident.

Additionally, for the same reasons, Plaintiff has made a *prima facie* showing that he did not negligently contribute to the cause of the Accident, and Defendants, in turn, have failed to generate a triable issue of material fact. This mandates dismissal of Defendants' First, Twelfth,

Fifteenth, Sixteenth, and Eighteenth Affirmative Defenses, which allege varying forms of contributory negligence or that Defendants' conduct was reasonable and proper under the circumstances giving rise to the Accident. Likewise, Defendants' Eleventh Affirmative Defense alleging assumption of risk must be dismissed, as it is inapplicable to the circumstances presented in this motor-vehicle case. *See De Diaz v. Klausner*, 198 A.D.3d 475, 477 (1st Dep't 2021) (holding that assumption of risk doctrine inapplicable where a pedestrian was struck by a vehicle while crossing the street at a crosswalk); *Ashbourne v. City of N.Y.*, 82 A.D.3d 461 (1st Dep't 2011).

Finally, Defendants' Seventeenth Affirmative Defense alleging the emergency doctrine must also be dismissed. The emergency doctrine is inapplicable here, "since in requiring drivers to maintain a safe distance between their vehicles and the ones in front of them, Vehicle and Traffic Law § 1129(a) imposes the duty to be aware of traffic conditions, including other vehicles suddenly stopping or slowing down." *Matias v. Grose*, 123 A.D.3d 485, 486 (1st Dep't 2014) (citations omitted).

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the movant was not addressed by the Court, it is hereby denied.

**ORDERED** that the part of plaintiff PESKEY A. SALMON's motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, granting him partial summary judgment as to liability only against defendants PAVEN K. PATEL and KALPESH PATEL is **GRANTED**; and it is further

**ORDERED** that the part of plaintiff SALMON's motion (Seq. No. 2) seeking an order, pursuant to CPLR 3212, dismissing defendants PAVEN K. PATEL's and KALPESH PATEL's First, Eleventh, Twelfth, Fifteenth, Sixteenth, Seventeenth, and Eighteenth Affirmative Defenses alleged in the Verified Answer to Amended Complaint, dated July 23, 2020, is **GRANTED** and said defenses are stricken; and it is further

**ORDERED** that the Clerk shall mark the motion (Seq. No. 2) disposed in all court records.

This constitutes the decision and order of the Court.

**Dated: January 4, 2022** **Hon.** *s/Hon. Veronica G. Hummel/signed 01/04/2022*
**VERONICA G. HUMMEL, A.J.S.C.**

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| 1. CHECK ONE..... | ☐ CASE DISPOSED IN ITS ENTIRETY | ☒ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☒ GRANTED ☐ DENIED | ☐ GRANTED IN PART ☐ OTHER |
| 3. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER ☐ SUBMIT ORDER | ☐ SCHEDULE APPEARANCE |
| | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |