SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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GLORIA QUINTANILLA,

Plaintiff,

- v -

THE CITY OF NEW YORK, JOSE L. FIGUEROA

Defendants.

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INDEX NO. 150766/2022

MOTION DATE 07/22/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24

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

In the underlying action, plaintiff Gloria Quintanilla seeks to recover monetary damages for personal injuries allegedly sustained on May 18, 2021 at 8:10 A.M., while she was driving a 2016 Toyota sedan bearing New York State plate number HZG578L, traveling eastbound on the Belt Parkway at or near the Farmers Boulevard exit in the County of Queens, City and State of New York, when her vehicle was struck in the rear by an unmarked New York City Police Department ("NYPD") vehicle operated by Jose L. Figueroa.

Pending before the court is a motion wherein plaintiff seeks an order, pursuant to Civil Practice Law and Rules ("CPLR") Section 3212 granting partial summary judgment in favor of plaintiff and against defendants THE CITY OF NEW YORK and JOSE L. FIGUEROA (collectively, the "City") on the issue of liability.

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]).

Arguments Made by the Parties

Plaintiff argues that the front of a City vehicle came into contact with the rear of plaintiff's vehicle while plaintiff was completely stopped in the left lane. Plaintiff argues that the courts of this State have consistently held that a rear-end collision with a stopped or stopping automobile establishes *prima facie* negligence, and that a claim that the driver of the lead vehicle made a "sudden stop" is generally insufficient to rebut the presumption of negligence. Plaintiff's counsel argues that the City vehicle did not have its sirens on; the police officer was not wearing a uniform; and there is "undisputed testimony" indicating that defendants' vehicle rear-ended plaintiff's vehicle while plaintiff's vehicle was at a complete stop.

In support of her arguments, plaintiff submits, *inter alia*, a transcript of her 50-h hearing, (NYSCEF Document #12), and a copy of the Report of Motor Vehicle Accident (NYSCEF Document #11) that states, in part: "VH2 collided with VH1 causing damages and injuries."

In opposition, the City does not dispute that the NYPD vehicle came into contact with the rear of plaintiff's vehicle. However, the City disputes plaintiff's argument that her vehicle came to a complete stop, and instead argues that the vehicle operated by plaintiff "came to an abrupt and unexpected stop on a busy highway." The City argues that due to the sudden nature of plaintiff's

stop, the City driver was unable to change lanes and avoid the collision, and that the City driver's conduct was non-negligent under the circumstances. The City argues that these differing versions of events creates a question of fact and, as such, precludes a granting of summary judgment.

In support of their argument, the City submits the sworn affidavit of the City driver, which states, in part:

> 3. As I approached west of the Springfield Boulevard Exit, a Toyota Corolla abruptly stopped in front of me. My vehicle was approximately one car length behind the Corolla travelling the same speed, which was approximately 30 miles per hour. When the Corolla stopped unexpectedly, my vehicle came into contact with the Corolla which had stopped abruptly. Due to traffic volume, I was unable to switch lanes and avoid the collision. As I tried to avoid the collision by applying my brakes, the front bumper of the driver's side of my vehicle tapped the rear bumper of the driver's side of the Corolla.
>
> 4. Because the Corolla stopped abruptly, I was unable to avoid the collision.

The City also argues that this motion is premature, as there has not yet been a Preliminary Conference in this matter and a schedule for discovery has not yet been established. The City argues that there are triable issues of fact regarding plaintiff s culpable conduct and the reasonableness of the conduct of the City, and these questions of fact cannot be resolved without holding depositions.

Conclusions of Law

As plaintiff properly argues, 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).

Here, even if this court were to accept the City's argument that the accident was caused by plaintiff having come to a complete stop one car length in front of the City's vehicle, the First Department has consistently held that in a rear-end collision, a "sudden stop" by a vehicle in front is insufficient to rebut the presumption of liability of the vehicle in the rear. *See e.g.* 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.

This court finds that the City has failed to offer a non-negligent explanation for the happening of the accident and has not, therefore, rebutted the presumption of negligence.

Finally, with respect to the City's argument that this motion is premature, this court finds that further discovery is not required in light of the facts in this case. Here, a deposition of the plaintiff is unlikely to uncover facts favorable to the City, and the City has not adequately explained how depositions would reveal additional facts tending to negate defendants' negligence in causing the rear-end collision. Further, it is the City's driver who is in the best position to give a non-negligent explanation for the subject accident. *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).

Conclusion

For all of the aforementioned reasons, it is hereby:

ORDERED that plaintiff's motion seeking summary judgment in plaintiff's favor and against defendants on the issue of liability is GRANTED.

9/21/2022
DATE

J. MACHELLE SWEETING, 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