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| Davidson v Paksh Mgt. LLC |
| 2022 NY Slip Op 33391(U) |
| September 28, 2022 |
| Supreme Court, Kings County |
| Docket Number: Index No. 508137/2020 |
| Judge: Ingrid Joseph |
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At an I.A.S. Term, **Part 83** of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of September 2022.

P R E S E N T : HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ANDRIA DAVIDSON,

Plaintiff,

Index No.: 508137/2020
Motion Seq. 1

-against-

PAKSH MANAGEMENT LLC and ANTHONY
PEDRAZA,

Defendants.

-----X
The following e-filed papers considered herein:

| | <u>E-Filed Papers Numbered</u> |
|---|--------------------------------|
| Notice of Motion/Affirmation/Affidavit/ Statement of Material Facts/Exhibits | <u>19 - 25</u> |
| Affirmation in Opposition/Response to Statement of Material Facts/Exhibits | <u>26 - 30</u> |
| Affirmation in Reply | <u>31</u> |

In this matter, Plaintiff moves for summary judgment on the issue of liability pursuant to CPLR § 3212. Defendants have opposed this motion asserting that there are issues of material fact as to how the accident occurred.

This action arises from a motor vehicle collision that occurred on March 18, 2019, on Montrose Avenue in Brooklyn, New York. Plaintiff argues that on the date of the accident, her vehicle was stopped when it was struck in the rear by Defendants' vehicle. Defendants argue that Plaintiff suddenly stopped her vehicle, causing Defendants' vehicle to strike the rear of Plaintiff's vehicle.

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. (see *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065 [1979]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Once this showing has been made, 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. (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact. (see *Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]).

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 *Levine v Taylor*, 268 AD2d 566 [2d Dept 2000]; *Itingen v Weinstein*, 260 AD2d 440 [2d Dept 1999]; *Macauley v Elrac, Inc.*, 6 AD3d 584 [2d Dept 2004]; *Vecchio v Hildebrand*, 304 AD2d 749 [2d Dept 2003]).

Plaintiff established her *prima facie* entitlement to judgment as a matter of law on the issue of liability through her Affidavit in which she avers that the vehicle she was operating was stopped when it was struck in the rear by a vehicle owned by Defendant Paksh Management LLC and operated by Defendant Anthony Pedraza.

The burden then shifted to Defendants to come forward with sufficient evidence to rebut the inference of negligence and to raise a triable issue of fact.

Defendant driver Anthony Pedraza testified at his deposition that he was traveling five miles per hour and two feet separated the front of Defendants' vehicle and the rear of Plaintiff's vehicle immediately before the accident.

It is well established that a driver approaching another vehicle from the rear is bound to maintain a reasonably safe rate of speed, maintain control of their vehicle, and use reasonable care to avoid colliding with the vehicle in front of it. The defendant driver's failure to do so, in the absence of an adequate, non-negligent explanation, constitutes negligence as a matter of law. (*see Barile v Lazzarini*, 222 AD2d 635 [2d Dept 1995]; *Benyarko v Avis Rent A Car Sys., Inc.*, 162 AD2d 572 [2d Dept 1990]; Vehicle and Traffic Law § 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.]). Defendants claim that Plaintiff's vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of Defendants' negligence. (*see McKeough v Rogak*, 288 AD2d 196 [2d Dept 2001]; *Russ v Investech Sec., Inc.*, 6 AD3d 602 [2d Dept 2004]; *McGregor v Manzo*, 295 AD2d 487 [2d Dept 2002]; *Vecchio v Hildebrand*, 304 AD2d 749 [2d Dept 2003]).

The evidence in the record demonstrates that Plaintiff's vehicle was stopped when it was struck in the rear by Defendants' vehicle, which was traveling five miles per hour and two feet away from the rear of Plaintiff's vehicle immediately before the accident. Defendant driver Anthony Pedraza breached his duty to maintain a reasonably safe rate of speed, maintain control of Defendants' vehicle, and use reasonable care to avoid colliding with the vehicle in front of it. Therefore, this Court finds that Defendants have failed to provide a non-negligent explanation for the rear-end collision or to raise any material questions of fact as to the issues of liability or

culpable conduct on the part of Plaintiff.

Accordingly, Plaintiff's motion for summary judgment on the issue of liability is granted, and Defendants' affirmative defenses as to Plaintiff's culpable conduct are dismissed.

This constitutes the Order and Decision by this Court.

ENTER,



HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice