SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
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ALCINO FIGUEROA,

Plaintiff,

-against-

JAYON C. KEANE, MR. SUPER INC., MANDEEP SINGH and C3 & E7 INC.,

Defendants.
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Index No.: 515920/2018
Motion Date:
Mot. Seq. No.: 2

AMENDED DECISION/ORDER

This court's decision/order dated August 8, 2023 is hereby recalled.

Upon the following e-filed documents, listed by NYSCEF as item numbers 24-36, the motion is decided as follows:

In this action to recover damages for personal injuries arising out of a motor vehicle accident, the defendants, MANDEEP SINGH and C3 & E7 INC., move for an order pursuant to CPLR 3212 awarding them summary judgment dismissing plaintiff's complaint insofar as asserted against them, as well as all cross-claims, on the grounds that they are not liable for the subject accident.

The plaintiff, ALCINO FIGUEROA, commences this action claiming that he was injured as a result of a motor vehicle accident that occurred on April 28, 2014, at the intersection of Bushwick Avenue and Cornelia Street, Brooklyn, New York. In support of their motion, the moving defendants submitted plaintiff Figueroa's deposition testimony. Mr. Figueroa testified that at the time of the accident, he was employed as a cab driver and was stopped at a red light with another cab in front of him, which was also stopped at the light. The cab in front of the plaintiff was owned and operated by the moving defendants. Plaintiff testified that while he was stopped at the red light, his vehicle was struck from behind by a white truck, that was owned by

defendant MR. SUPER INC. and driven by defendant JAYON C. KEANE. As a result of this contract, he claims his vehicle was pushed forward into the cab in front of him.

After the truck struck his vehicle, plaintiff testified that the truck hit some parked vehicles. He maintained that both plaintiff's vehicle and the cab in front of him that was owned and operated by the moving defendant were at a complete stop at the red light. When plaintiff was asked if he told the police that the other two vehicles collided before the truck collided with his vehicle, he said the police report was incorrect, and he reaffirmed that the white truck hit him first, and then he hit the vehicle in front of him. Significantly, the police report is not part of the record on this motion.

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068).

" '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' " (*Jimenez v. Ramirez*, 171 A.D.3d 902, 903, 98 N.Y.S.3d 131, quoting *Nsiah--Ababio v. Hunter*, 78 A.D.3d 672, 672; *see* Vehicle and Traffic Law § 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 (*see Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610; *Mihalatos v. Barnett*, 175 A.D.3d 492, 106 N.Y.S.3d 165).

Here, the moving defendants established their prima facie entitlement to summary judgment by submitting admissible proof that that the accident was solely the result of the negligence of the co-defendants, the owner and operator of the white truck, in following their vehicles too closely. The moving defendants also established their freedom from negligence as a matter of law (see *Breton v. Adler*, 281 A.D.2d 380, 380--81, 721 N.Y.S.2d 280, *Hoffman v. Eastern Long Island Transp. Enterprise, Inc.*, 266 A.D.2d 509, 698 N.Y.S.2d 552; *Lopez v. Dobbins*, 164 A.D.3d at 777, 79 N.Y.S.3d 566; *Nikolic v. City--Wide Sewer & Drain Serv. Corp.*, 150 A.D.3d 754, 755; *see also Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898).

In opposition, the plaintiff, the only party that opposed the motion, failed to raise a triable issue of fact as to whether the moving defendants' negligence contributed to the accident. Since the plaintiff failed to submit a copy of the certified police report, the Court will not consider plaintiff's claim that the police report creates triable issue of fact as to whether there was a collision between plaintiff's vehicle and the vehicle owned and operated by the moving defendants prior to the time the white truck struck plaintiff's vehicle.

Notwithstanding the above, the Court must deny the motion as premature. "A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment" (*Salameh v. Yarkovski*, 156 A.D.3d 659, 660, 64 N.Y.S.3d 569; *see Okula v. City of New York*, 147 A.D.3d 967, 968, 48 N.Y.S.3d 191; *Brea v. Salvatore*, 130 A.D.3d 956, 956, 13 N.Y.S.3d 839). "A party opposing summary judgment is entitled to obtain further discovery when it appears that facts supporting the opposing party's position may exist

but cannot then be stated" (*Brea v. Salvatore,* 130 A.D.3d at 956, 13 N.Y.S.3d 839; *see* CPLR 3212[f]; *Salameh v. Yarkovski,* 156 A.D.3d at 660, 64 N.Y.S.3d 569; *Okula v. City of New York,* 147 A.D.3d at 968, 48 N.Y.S.3d 191). "A party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (*MVB Collision, Inc. v. Progressive Ins. Co.,* 129 A.D.3d 1040, 1041, 13 N.Y.S.3d 139; *see Salameh v. Yarkovski,* 156 A.D.3d at 660, 64 N.Y.S.3d 569; *Antonyshyn v. Tishman Constr. Corp.,* 153 A.D.3d 1308, 1310, 61 N.Y.S.3d 141). In his opposition, plaintiff's counsel states that to date, the moving defendant, MANDEEP SINGH, has not yet been deposed. This is especially significant since Mr. Singh did not submit an affidavit in support of the motion. In fairness, before deciding defendants' motion, the plaintiff should be given an opportunity to depose Mr. Singh to explore whether the vehicle he was operating was struck by plaintiff's vehicle before plaintiff's vehicle was rear-ended by the white truck as the police report allegedly indicates.

Accordingly, it is hereby

ORDERED that the motion is **DENED,** without prejudice, and defendants MANDEEP SINGH and C3 & E7 INC. may renew the motion after discovery has been completed.

This constitutes the decision and order of the Court.

Dated: August 28, 2023

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020