SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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JUSTIN PEREZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF SANITATION, NICHOLAS M ASARO

Defendants.

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INDEX NO. 152638/2023

MOTION DATE 06/22/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

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

Pending before the court is a motion where plaintiff seeks an order: (a) pursuant to Civil Practice Law and Rules 3212, granting the plaintiff summary judgment against defendants (collectively, the "City") on liability; and (b) dismissing the City's affirmative defenses.

Arguments Made by the Parties

Plaintiff argues that on November 7, 2022 at approximately 7:30 a.m., plaintiff's vehicle was traveling southbound in the right lane on 11th Avenue approaching West 45th Street, within the City, County and State of New York. As plaintiff's motor vehicle was making a left turn onto West 45th Street, it was struck in the rear by the front of the City's motor vehicle (a Department of Sanitation "sweeper" truck). Plaintiff argues that when a rear end collision occurs, the driver of the front vehicle is entitled to summary judgment on liability unless the driver of the rear ending vehicle provides a non-negligent explanation for causing the accident. Plaintiff argues that in this

case, the City driver has no valid excuse for causing this rear-end accident, and there are no issues of fact as to the City's complete liability for this accident. In support of his argument, plaintiff attached, *inter alia*, his own sworn Affidavit (NYSCEF Doc. No. 12); a 12-second video recording that plaintiff states accurately shows the accident (NYSCEF Doc. No. 13); a photo (NYSCEF Doc. No. 14) which plaintiff alleges shows the damage to the back of plaintiff's vehicle; and a certified copy of the police report (NYSCEF Doc. No. 11). The police report reads, in part:

> PD DID NOT WITNESS THE INCIDENT. VI STATED HE WAS TRYING TO HEAD SOUTHBOUND ON 11AVE. VI STATED V2 HAS HIS HAZARD LIGHT ON, SO V1 TRY TO CHANGE LEFT LANE TO PASS V2. VI STATED V2 SUDDENLY DECIDE TO MAKE RIGHT TURN. VI STATED HE TRIED TO BREAK BUT THE FLOOR TS TOO WET AND REAR ENDED V2. VI DTD NOT CLAIM INJURY. V2 STATED HE HAS HIS HAZARD LIGHT ON AND WAS TRYING TO MAKE RIGHT TURN FROM 11 AVE TO WEST 45 STREET. V2 STATED VI COLLIDED V2 ' S REAR CAUSING DAMAGE. V2 CLAIMED BODY PAIN AND NECK PAIN. V2 IS TRANSPORT BY EMS STARK BUS 11A TO MOUNT SINAI […]

In opposition, the City does not dispute that the City vehicle struck the rear of plaintiff's vehicle. However, the City argues that summary judgment should not be granted at this juncture because this motion is premature. The City argues that a preliminary conference has not been held; a Case Scheduling Order has not been issued; the City has not yet received a Verified Bill of Particulars from plaintiff or received a complete medical file for plaintiff's treatment relating to this incident; no depositions of any party have been held; there remain open questions of fact that need to be addressed through discovery; and that the City, in particular, desires to have the chance to depose any passengers that may have been in plaintiff's vehicle at the time of the accident.

The City also argues that it has a non-negligent explanation for causing the accident. Specifically, the City argues that in the moments before the collision, plaintiff was illegally double parked in the City's driving lane with his four-way hazard lights flashing. The City driver, observing that plaintiff's car was parked with hazard lights on, engaged his left turning signal,

intending to merge into the left lane so he could go around plaintiff's car, which was not moving. Suddenly and without warning, plaintiff made a right turn. The City driver immediately hit the brakes in the sweeper, but due to the roadway being slick, he was unable to stop in time. The City argues that plaintiff did not signal his intent to turn or to move and that plaintiff did not turn on his turn signal at any time. In fact, at the time plaintiff made the right turn, plaintiff's hazard lights were still on. The City argues that plaintiff violated Vehicle and Traffic Law ("VTL"), including section 1163 (discussed below), by double parking in a driving lane; by abruptly making a turn without activating his turn signal; and by driving and turning with his four way flashing hazard lights on. In support of their arguments, the City attached, *inter alia*, a sworn Affidavit (NYSCEF Doc. No. 18) by the City driver, a Department of Sanitation Unusual Occurrence Report (NYSCEF Doc. No. 19), and the transcript of plaintiff's 50-h hearing (NYSCEF Doc. No. 20).

Conclusions of Law

Here, there is no dispute that prior to the collision, plaintiff was double parked in a driving lane with his hazard lights on. In fact, plaintiff himself testified during his 50-h hearing that he "stopped to let my supervisor out"; that he had his hazard lights on; and that he "was double parked because there was cars parked there" (transcript p. 11). There is also no dispute that plaintiff made a right turn without activating his turn signal, and that during the turn, plaintiff's hazard lights remained on. In fact, the video submitted by plaintiff shows that during the turn, and at the conclusion of the turn, plaintiff's hazard lights remained on.

As is relevant here, in People v Rice, 44 AD3d 247 [1st Dept 2007], the Appellate Division, First Department determined:

> The hearing court concluded, however, that while the Vehicle and Traffic Law (VTL) requires the use of directional signals on all occasions when a turn (a change of direction) is made, it does not require signaling when a lane change can be made in complete safety without such a signal. [..] We disagree […].
>
> VTL 1163, entitled "Turning movements and required signals," provides, in pertinent part:
>
> > *"(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred *251 sixty,2 or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.* No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided*" (emphasis added).*
>
> […]
>
> Our analysis begins with the well-settled proposition that in matters of statutory interpretation, the courts are obligated to construe an enactment so as to effectuate the intent of the legislature […]
>
> […] Here, not only is there an absence of any contrary intent, but the absence of any such qualification or limitation is consistent with the wording of section 1163(a), which imposes a duty to signal a lane change under all circumstances. Indeed, if a duty to signal a lane change existed only under certain circumstances, as found by the hearing court, then a harmonizing reference to such a limitation would have been included in section 1163(d).
>
> […]
>
> In view of the clear language of the statute, coupled with its unequivocal legislative history, we can only conclude that the ***hearing court erred when it determined that VTL 1163 does not require a signal, in all instances, when changing a lane*** [internal citations omitted, emphasis added].

See also Klopchin v Masri, 45 AD3d 737 [2d Dept 2007]:

> The plaintiffs met their burden by submitting evidence sufficient to establish their prima facie entitlement to judgment as a matter of law on the issue of liability […]. In opposition, the defendants raised a triable issue of fact. The defendants' assertion that the injured plaintiff made a sudden stop and ***failed to give proper signals, as required by Vehicle and Traffic Law § 1163, contradicted the injured plaintiff's contention and, if believed, provided a nonnegligent explanation for the rear-end collision*** [internal citations omitted, emphasis added];

and Maschka v Newman, 262 AD2d 615 [2d Dept 1999]:

> It is well settled that a rear-end collision with a stopped vehicle creates a prima facie case of liability with respect to the operator of the moving vehicle and imposes a duty of explanation on the operator of the moving vehicle. However, a "driver of a motor vehicle has a duty to keep proper control of that vehicle, and to not stop suddenly or slow down ***without proper signaling so as to avoid a collision.***" Under the circumstances of this case, there exist issues of fact concerning ***whether the defendant contributed to the accident by making a sudden stop and failing to give proper signals in compliance with Vehicle and Traffic Law § 1163*** [internal citations omitted, emphasis added]

Here, it is undisputed that plaintiff failed to give the proper signals prior to making a turn. Given these facts, as applied to the relevant law, this court finds that the City has provided a non-negligent explanation for the accident. Accordingly, plaintiff's motion for summary judgment is denied.

Conclusion

It is hereby:

ORDERED that plaintiff's motion is **DENIED**.

9/20/2023
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED	X	**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**