SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

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PEREZ, ROSANA Index №. **31047/2017E**

- against - Hon. **JOHN R. HIGGITT**,

H&M CAR LIMO, INC., et al A.J.S.C.

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The following papers numbered **17** to **26** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (DEFENDANT)**, noticed on **August 13, 2018** and duly submitted as No. **45** on the Motion Calendar of **October 11, 2018.**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	17-20
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	22-25
Replying Affidavit and Exhibits	26
Filed Papers	
Memoranda of Law	
Stipulations	21

Upon the foregoing papers, the motion of defendants Clase and American United Transportation Inc. for summary judgment on the ground that they are not liable for the subject accident is denied, in accordance with the annexed decision and order.

Dated: **01/14/ 2019**

Hon. _____
JOHN R. HIGGITT, A.J.S.C.

Check one:
□ Case Disposed in Entirety
■ Case Still Active

Motion is:
□ Granted □ GIP
■ Denied □ Other

Check if appropriate:
□ Schedule Appearance □ Settle Order
□ Fiduciary Appointment □ Submit Order
□ Referee Appointment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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ROSANA PEREZ,

Plaintiff,

- against -

H&M CAR LIMO, INC., JOHN DOE a driver not yet identified, WILSON CLASE and AMERICAN UNITED TRANSPORTATION INC.,

Defendants.

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DECISION AND ORDER

Index No. 31047/2017E

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that took place on July 26, 2017. The vehicle driven by defendant Clase and owned by defendant American United Transportation Inc. ("the Clase defendants") was stopped at a red traffic light behind plaintiff's vehicle. At that time, the vehicle operated by defendant "John Doe" and owned by defendant H&M Car Limo, Inc. ("the H&M defendants") struck the rear of the Clase defendants' vehicle, propelling it into plaintiff's vehicle. The Clase defendants seek summary judgment dismissing the complaint as against them on the ground that they are not liable for the subject accident. For the reasons that follow, the Clase defendants' motion is denied.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" *(LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). A rear-end collision establishes a prima facie case of negligence against the rearmost driver in a chain

confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez,* 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that 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 vehicles and the traffic upon and the condition of the highway" (*see Darmento v Pacific Molasses Co.,* 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*).

The Clase defendants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). The Clase defendants submitted a copy of the pleadings, certified police report and defendant Clase's affidavit. Defendant Clase averred that at the time of the accident he was stopped behind plaintiff waiting for a red traffic light to change. At that time, the vehicle operated by the H&M defendants struck the rear of his vehicle, causing the Clase defendants' vehicle to strike plaintiff's vehicle.

In opposition, the H&M defendants challenge the timing of the motion, arguing that the motion is premature as no depositions have been conducted, and those defendants are unable to submit an affidavit of one with personal knowledge of the facts underlying the accident to oppose the motion. The H&M defendants submitted the affidavit of Philip Mallor, an investigator hired to find the driver of the H&M defendants' vehicle. Mr. Mallor averred he had attempted to locate the driver of the H&M defendants' vehicle and that those efforts had been unsuccessful so far. Because there is relevant evidence or facts that are presently within the exclusive knowledge of the Clase defendants, and the H&M defendants, despite due diligence

have been unable to locate the driver of the H&M defendants vehicle, the court denies the Clase defendants' motion to afford the H&M defendants a further opportunity to muster evidence in admissible form to submit in opposition (*see* CPLR 3212 [f]).

Accordingly, it is

ORDERED, that the Clase defendants' motion for summary judgment is denied without prejudice to a new motion no sooner than April 26, 2019.

Dated: January 14, 2019

John R. Higgitt, A.J.S.C.

[*4]