SUPRMEE COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24
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LUCIA ESPINAL and JOHAN DEJESUS,

Plaintiffs,

-against-

AMAZON.COM, INC., AMZAON.COM SERVICES, LLC, AMAZON LOGISTICS, INC., LORAY LOGISTICS CORP., AMAZON LOGISTICS, INC., d/b/a LORAY LOGISTICS, CORP., LORAY LOGISTICS CORP., d/b/a AMAZAON LOGISTICS, INC., and JUSTIN K. PHILLIPS,

Defendants.
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Mot. Seq. #2

Index No. 530939/2021

Decision and Order

HON. LISA S. OTTLEY, J.S.C.
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Summary Judgment submitted April 29, 2024.

Papers	Numbered
Notice of Motions and Affirmation	1&2[Exh. A-F]
Affirmation/Affidavit in Opposition	3[Exh. 1-6]
Memorandum of Law in Opposition	4
Reply Affirmation	5

Plaintiff moves for an order granting summary judgment on the issue of liability in his favor, striking the second, fifth, twelfth, fifteenth, sixteenth, and eighteenth affirmative defenses of comparative negligence and culpable conduct on the part of the plaintiffs by defendants, Lory Logistics Corp., and Justin K. Phillips, and setting this matter down for trial on the assessment of damages. Defendants, Loray Logistics Corp., and Justin K. Phillips, oppose plaintiffs' motion on the grounds that the motion is procedurally defective, a material issue exists as to whether plaintiff, Lucia Espinal, was in the vehicle at the time of the accident, and it is premature due to outstanding discovery.

After careful review of the moving papers and opposition thereto, the court finds as follows:

First, this court will address defendants' argument as to the plaintiffs' motion for summary being procedurally defective, pursuant to CPLR 3212(b). Although CPLR 3212(b) requires that a motion for summary judgment be supported by copies of the pleadings, the

court has discretion to overlook the procedural defect of missing pleadings when the record is 'sufficiently complete. *See,* Flushing AV Laundromat, Inc. v. Qu, 229 A.D3d 516, 215 N.Y.S.3d 400 (2nd Dept., 2024), where the court held that a complete set of papers being available for the court's consideration which were electronically filed is sufficient, and the argument as to a fatal defect is without merit.

Summary Judgment

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. *See,* Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action." *See,* Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. *See,* Marine Midland Bank, N.A. v. Dino v. Artie's Automatic Transmission Co., 168 A.D.2d 610 (2nd Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. *See, CPLR 3212[b];* Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

"A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence with respect to the operator of the rearmost vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *See,* Edgerton v. City of New York, 160 A.D.3d 809, 810, 74 N.Y.S.3d 617 (2nd Dept., 2018).

The court finds that the plaintiffs have established their *prima facie* entitlement to judgment as a matter of law on the issue of liability against the defendants. The plaintiff, Lucia Espinal's deposition testimony, states that she was at a stop and parked when her vehicle was struck in the rear by the defendant, Justin K. Phillips, who was the driver of the vehicle that struck her in the rear. *See,* Tsyganash v. Auto Mall Fleet Mgt., Inc., 163 A.D.3d 1033, 83 N.Y.S.3d 74 (2nd Dept., 2018); Drakh v. Levin, 123 A.D.3d 1084, 1085, 1 N.Y.S.3d 202 (2nd Dept., 2014); Niyazov v. Bradford, 13 A.D.3d 501, 786 N.Y.S.2d 582 (2nd Dept., 2004).

In opposition, defendants failed to raise a triable issue of fact regarding a non-negligent explanation for the rear-end collision (see, Tsyganash v. Auto Mall Fleet Mgt., Inc., *supra*; Edgerton v. City of New York, *supra*). The defendants' attorney's affirmation which lacks probative value and does not provide documentary evidence in support of its opposition, fails to raise a material issue of fact and is insufficient to defeat plaintiff's motion for summary judgment. *See,* Zuckerman v. City of New York, *supra;* Pryhuber v. Maffucci Storage Corp., 170 A.D.2d 660, 567 N.Y.S.2d 81 (2nd Dept., 1991). The videos which were submitted by both plaintiffs and defendants show that plaintiffs' vehicle was stopped and parked when it was struck in the rear by the defendant-driver, Justin K. Phillips. The plaintiff submitted a video which shows the vehicle driven by the defendant, Justin K. Phillips, being

parked before he entered the vehicle, and the plaintiffs' vehicle being parked a little distance in front of the defendants' vehicle before defendant struck plaintiffs' vehicle in the rear while attempting to merge into traffic. The plaintiffs' vehicle was not moving, it was completely stopped and parked. The defendants have failed to raise a triable issue of fact as to whether the location of the vehicle was a proximate cause of the accident. *See,* Reeves v. Wilson, 214 A.D.3d 1013, 186 N.Y.S.3d 329 (2nd Dept., 2023).

A plaintiff is no longer required to show freedom from comparative fault in order to establish his or her *prima facie* entitlement to judgment as a matter of law on the issue of a defendant's liability (see, *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898; *Merino v. Tessel*, 166 A.D.3d 760, 87 N.Y.S.3d 554 (2nd Dept., 2018))). 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. *See,* Vehicle and Traffic Law § 1129[a]. The defendants' attorney's bare assertions as to plaintiff's comparative fault, without documentary proof, is insufficient to raise a triable issue of fact as to whether there was a non-negligent explanation of the accident. *See,* Gutierrez v. Trillium USA LLC., 111 A.D.3d 669, 974 N.Y.S.2d 563 (2nd Dept., 2013).

Due to defendants' failure to provide a non-negligent explanation of the accident, the plaintiffs established that the defendant driver was the sole proximate cause of the accident which warrants dismissal of the defendants' affirmative defenses of comparative fault. *See,* Yawagyentsag v. Safeway Construction Enterprise LLC, 225 A.D.3d 827, 207 N.Y.S.3d 608 (2nd Dept., 2024). In the case at bar, there is no explanation from the defendants as to how the plaintiff's actions contributed to the accident. Although the issue of comparative fault generally presents a question of fact, that issue should be submitted to a jury "only where there is a triable issue of fact as to whether the frontmost driver also operated his or her vehicle in a negligent manner. See, Clarke v. Phillips, 112 A.D.3d 872, 978 N.Y.S.2d 281 (2nd Dept., 2013), citing, Gutierrez v. Trillium USA LLC., 111 A.D.3d 669, 974 N.Y.S.2d 563 (2nd Dept., 2013). The fact that the plaintiff, Lucia Espinal, may or may not have been in the vehicle at the time of the rear end collision does not negate the defendants' liability, as to the proximate cause of the accident.

As to the defendants' argument that the plaintiffs' motion for summary judgment is premature due to outstanding discovery, the court finds the argument unavailing. A party who contends that a summary judgment motion is premature is required to 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. *See,* Singh v Avis Rent A Car Sys., Inc., 119 A.D.3d 768, 989 N.Y.S.2d 302 (2nd Dept., 2014). The mere hope or speculation that evidence may be uncovered during the discovery process is insufficient to deny the motion. *See,* Lopez v WS Distrib., Inc., 34 A.D.3d 759, 825 N.Y.S.2d 516 (2nd Dept., 2006). Moreover, the defendant has failed to demonstrate that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant. *See,* Pierre v Demoura, 148 A.D.3d 736, 48 N.Y.S.3d 260 (2nd Dept., 2017).

Accordingly, plaintiffs' motion for summary judgment on the issue of liability as to defendants Loray Logistics, Corp., and Justin K. Phillips, is granted in its entirety.

The clerk of the court is hereby directed to set the matter down for a trial on the issue of damages.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York
October 21, 2024

HON. LISA S. OTTLEY, J.S.C.

HON. LISA S. OTTLEY