IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Mikeona Ellis,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 2740
	)	
Fedex Ground Package System, Inc.,	)	
Fedex Corporate Services, Inc.,	)	
Ricardo Magana, Bartolo Roa, and	)	
Eva Metcalf,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is improper if reasonable persons could draw divergent inferences from undisputed material facts or if there exists a disputed material fact. Here, the deposition testimony of two defendants raise genuine issues of material fact as to the timing of events and the proximate cause of the plaintiff's injuries. Since the moving defendant's right to relief is unclear, this court must deny the summary judgment motion except as to one unsupported claim.

Facts

At approximately 10:00 a.m. on May 15, 2018, Eva Metcalf was driving an SUV south on South Western Avenue near West 19th Street in Chicago. Mikeona Ellis sat in the front-seat passenger seat. At the same time, Bartolo Roa was driving a truck behind Metcalf, and Ricardo Magana was driving a cargo van behind Roa. Immediately north of the intersection, Magana's van rear-ended Roa's truck that then rear-ended Metcalf's SUV. The impact caused Ellis's injuries.

On May 4, 2020, Ellis filed a second amended complaint against the defendants. In count five, Ellis alleges Metcalf owed Ellis a duty of care to operate, maintain, and control the SUV in a safe and lawful manner. Ellis claims Metcalf breached her duty by: (a) operating the SUV without keeping a proper lookout; (b) driving faster than what was reasonable and proper given the traffic conditions; (c) failing to use the SUV's horn to warn others; (d) stopping abruptly and without warning; and (e) was otherwise negligent.

The case proceeded to discovery. At her deposition, Metcalf testified that a parked vehicle darted in front of Metcalf's SUV and then turned onto West 19th Street. Metcalf stated the vehicle cut her off and forced her to slow down. Within seconds, she felt a heavy impact on the rear of the SUV. At his deposition, Roa testified that a van was tailing him by a car length. When Metcalf braked, Roa applied his brakes and came to a complete stop one to two feet behind Metcalf's SUV. Metcalf's and Roa's testimony differs as to how much time elapsed before the collision, whether Metcalf stopped, her speed, the location of the phantom vehicle before and after it entered the traffic lane, and whether Roa admitted fault after the accident.

On March 11, 2021, Metcalf filed a summary judgment motion. Ellis and Magana each submitted a response brief. Metcalf filed her reply.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment. 735 ILCS 5/2-1005. In a motor vehicle collision case, the question whether any particular driver is negligent is generally one for a jury. *Rettig v. Heiser*, 2013 IL App (4th) 120985, ¶ 33 (citing *Kleiss v. Bozdech*, 349 Ill. App. 3d 336, 353 (4th Dist. 2004)). There must, however, be a question for the jury to decide. *Id.* Under section 2-1005(c), summary judgment is appropriate if the record reveals there exists no genuine issue of material fact and the moving party is entitled to a judgment as a

matter of law. 735 ILCS 5/2-1005(c). In determining whether a genuine issue of material fact exists, a court is to "construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). "Where reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact." *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 22 (quoting *Espinoza v. Elgin, Joliet & E. Ry.*, 165 Ill. 2d 107, 114 (1995)).

A defendant moving for summary judgment may disprove a plaintiff's case by establishing that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates that the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate that he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

This court must deny most of the defendant's motion for two reasons. First, Metcalf fails to address count five subparagraph 12(c) regarding her alleged failure to give an audible warning with her horn in violation of the Vehicle Code. *See* 625 ILCS 5/12-601. Second, Metcalf's and Roa's deposition testimony raise several questions of material fact. For example, Metcalf points out that both she and Roa successfully applied their brakes so as to avoid a collision. The testimony diverges, however, on a variety of key issues, such as the amount of time that elapsed before the collision. *Cf.* Ex. B, Metcalf Dep., 14:24 and 15:1-7, *with* Ex. C, Roa Dep., 15:9-20 and 17:10-13. The testimony is inconsistent as to whether Metcalf fully stopped or merely slowed her vehicle before being struck by Roa. *Cf.* Ex. B, 12:4-7; 12:8-24; 13:1-13 *with* Ex. C, 15:3-20; 18:5-9. Similarly, it is unclear if Metcalf had

exceeded the posted speed limit. *Cf.* Ex. B, 12:1-3; 12:19-23 *with* Ex. C, 14:12-19). There remains a question of the location of the phantom vehicle both before and after it allegedly darted into Metcalf's traffic lane. *Cf.* Ex. B, 11:3-22 *with* Ex. C, 15:3-8; 17:18-24). It is also disputed whether Roa admitted fault after the accident. *Cf.* Ex. B, 25:16-22 *with* Ex. C, 22:12-23; 25:14-16.

To accept Metcalf's version of events would, at this juncture, overlook contrary testimony. Further, to accept Metcalf's testimony over that of Roa or other parties would suggest this court finds her testimony to be more credible. Of course, credibility determinations and the resolution of inconsistencies and conflicts in testimony are for a jury. *York v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 222 Ill. 2d 147, 179 (2006).

In contrast, the summary judgment motion must be granted as to subparagraph 12(e). No party has presented evidence as to how Metcalf was otherwise negligent. A complaint "'must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions.'" *Id.* (quoting *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30 (2006) (citations omitted). Ellis has not pointed to any evidence as to how else Metcalf was otherwise negligent. Should discovery identify other acts or omissions, Ellis could seek to file an amended complaint. At this point, however, the record does not support subparagraph 12(e).

Conclusion

For the reasons presented above, it is ordered that:

1. Metcalf's summary judgment motion is granted in part and denied in part;
2. Summary judgment is granted as to count five, paragraph 12(e), and that claim is dismissed with prejudice; and

3. Summary judgment is denied as to count five, paragraph 12(a-d).

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 01 2021

Circuit Court 2075