SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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KEVIN P. WILLISON,

Plaintiffs,

DECISION AND ORDER

-against-

Index No.: 031259/2018

Motion #1 - MG
DC- N
Adj: 9/5/18

JAKE T. HEALEY and SEAN M. HEALEY

Defendants.

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Thomas E. Walsh, J.S.C.

The following papers, numbered 1, were considered in connection with Plaintiff's Notice of Motion for an Order granting Plaintiff summary judgment as to legal liability and for such other and further relief as this Court deems just and proper:

PAPERS	**NUMBERED**
Notice of Motion/Affirmation of Jeffrey M. Adams, Esq./Exhibits (A-C)	1

Upon the foregoing papers, the Court now rules as follows:

This action stems from a motor vehicle accident which occurred on May 24, 2017 on Interstate 87 southbound in the Village of Nyack. It is uncontested based upon the certified Police Accident Report that at the time of the accident, Plaintiff's was traveling southbound on Interstate 87 when Plaintiff began to slow down and the Defendant driving behind the Plaintiff attempted to change into the middle lane to avoid a collision but struck the rear passenger side of the Plaintiff's vehicle causing Plaintiff's vehicle to fishtail and strike the front passenger side quarter panel of Plaintiff's vehicle. Plaintiff submitted an affidavit in support in which he stated that at the time of the accident the traffic on the Thruway was moving normally, he was traveling at the posted speed limit, he did not apply his brakes in an abrupt or sudden manner and his brake lights were working. Additionally, Plaintiff stated in his affidavit that he did not

contribute in any way to the happening of the accident.

Plaintiffs commenced this action against Defendants by the filing of a Summons and Verified Complaint March 6, 2018. Issue was joined by service of a Verified Answer which was filed on March 28, 2018.

Plaintiff filed the instant Notice of Motion including an Affirmation and Exhibits seeking an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting partial summary judgment on the issue of liability against the Defendants - citing the Certified Police Accident Report and Plaintiff's Affidavit.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. [*Giuffrida v. Citibank Corp., et al.*, 100 N.Y.2d 72 (2003), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986)]. The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. [*Lacagnino v. Gonzalez*, 306 A.D.2d 250 (2d Dept. 2003)]. However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. [*Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124 (2000), citing *Alvarez*, supra, and *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851 (1985)]. Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. [*Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966 (1988) *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980)].

It is further well-settled that a "rear-end collision with a stopped vehicle creates a prima facie case of negligence against the operator of the offending vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision." [*Staton v. Ilic*, 69 A.D.3d 606 (2d Dept. 2010); *see also*, *Zdenek v. Safety Consultants, Inc.*, 63 A.D.3d 918 (2d Dept. 2009); *Rainford v. Han*, 18 A.D.3d 638 (2d Dept.

2005)]. If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and the owner of the stationary vehicle are entitled to summary judgment on the issue of liability. [*Staton v. Ilic*, 69 A.D.3d 606 (2d Dept. 2010)]. The reasoning behind said inference is the well-settled rule that "when the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his or her vehicle, and to exercise reasonable care to avoid colliding with the other vehicle." [*Macauley v. Elrac, Inc.*, 6 A.D.3d 584, 584 (2d Dept. 2004) (defendant's testimony that she did not recall seeing brake lights or tail lights illuminated on the plaintiff's vehicle before the collision did not adequately rebut the inference of negligence)].

As to the Plaintiff's instant motion for partial summary judgment as to liability, "a plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries." [*Poon v. Nisanov*, 2018 NY Slip Op 04365, * 3 (2d Dept June 13, 2018)]. In a recent decision, the Court of Appeals stated that "[t]o be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault." [*Rodriguez v. City of New York*, 2018 N.Y. Slip Op 02287 *6, 31 NY3d 312, 324-325 (2018)]. Specifically, the Court in Rodriguez stated that "that a plaintiff's comparative negligence is no longer a complete defense to be pleaded and proven by the plaintiff, but rather is only relevant to the mitigation of plaintiff's damages and should be pleaded and proven by the defendant." [*Rodriguez v. City of New York*, 2018 NY Slip OP 02287, *5]

In this matter, Plaintiffs have established their *prima facie* entitlement to judgment as a matter of law on the issue of liability. The burden, then, shifted to Defendants to produce admissible evidence showing one or more disputes of material fact. [*Fleet Credit Corp. V.*

Harvey Hutter & Co. Inc., 207 A.D.2d 380 (2d Dept. 1994)]. Defendants have not met that burden. Defendant's have failed to oppose the instant application and provide a non-negligent excuse for striking Plaintiff's vehicle in the rear. This matter is ripe for summary judgment. If the accident occurred as Plaintiff described, then Defendant struck Plaintiff's vehicle while he was traveling on the Thruway (Rte 87).

As noted previously, despite the fact that the instant motion was served upon Defendant's counsel, no opposition was received. As such, Defendant has not sufficiently come forward with a non-negligent explanation for the accident.

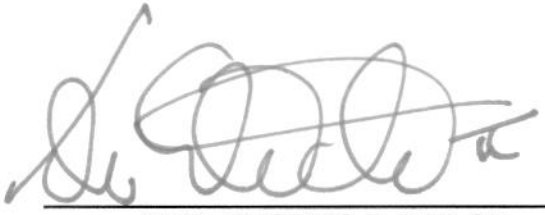
Accordingly, it is hereby

ORDERED that Plaintiff's unopposed Notice of Motion for Summary Judgment on the issue of liability is granted in its entirety; and it is further

ORDERED that counsel for the parties shall appear before the Honorable William Sherwood for a pre-trial conference on **WEDNESDAY SEPTEMBER 5, 2018 at 9:30 a.m.**.

The foregoing constitutes the Decision and Order of this Court on Motion #1.

Dated: New City, New York
July 26, 2018



HON. THOMAS E. WALSH
Justice of the Supreme Court

To:

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