To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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WAYNE MAXWELL,

Plaintiff,

-against-

DECISION & ORDER
Index No. 51177/2018
Sequence No. 1

FAZAL RAHMAN,

Defendant.

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WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 25-39 were read in connection with plaintiff's motion for partial summary judgment on the issue of liability.

This is an action for serious personal injuries arising out of an automobile accident that occurred on October 19, 2016, on Westchester Avenue at its intersection with Water Place near the Hutchinson River Parkway in the County of Bronx, City and State of New York, when defendant's motor vehicle rear ended a motor vehicle operated by plaintiff while he was stopped at a red light.

Plaintiff brings this motion for summary judgment on the issue of liability, claiming that there is no triable issue of fact.

Upon the foregoing papers, the motion is decided as follows:

A proponent of a summary judgment motion must make a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the

absence of any material issues of fact" (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Moreover, failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1986]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is "required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320, 324 [1986]).

Vehicle and Traffic Law §1129(a) imposes a duty on all drivers to drive at a safe speed and maintain a safe distance between vehicles, always compensating for any known adverse road conditions (Ortega v City of New York, 721 NYS2d 790 [2d Dept 2000]). "When a driver approaches another vehicle from the rear, he is bound to maintain a reasonably safe rate of speed and to maintain control of his vehicle and use reasonable care to avoid colliding with the other vehicle" (Young v City of New York, 113 AD2d 833, 834 [2d Dept 1985]). "A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the

part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (Fernandez v Babylon Mun. Solid Waste, 117 AD3d 678 [2d Dept 2014]). In other words, proof of a rear-end collision establishes a prima facie case of negligence on the part of the driver of the vehicle that strikes the forward vehicle and imposes a duty upon said offending vehicle to come forward with admissible proof to establish an adequate, non negligent explanation for a rear-end collision (Parise v Meltzer, 204 AD2d 295 [2d Dept 1994]; Moran v. Singh, 10 AD3d 707, 708 [2d Dept 2004]); Cerda v Parsley, 273 AD2d 339 [2d Dept 2000]). In addition, where a vehicle is lawfully stopped, there is a duty imposed on the operators of vehicles traveling behind it in the same direction to come to a timely halt (Carter v Castle Elec. Contr. Co., 26 AD2d 83 [2d Dept 1966]). The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision because he or she is in the best position to explain whether the collision was due to a reasonable, non-negligent cause (Carter v Castle Elec. Contr. Co., at 85).

The sudden stop of a lead car is one of the non-negligent explanations of a rear-end collision, because the operator of that car has a duty to avoid stopping suddenly without properly signaling to avoid a collision "when there is opportunity to give such signal" (Vehicle and Traffic Law §1163; *see id.;* Colonna v Suarez, 278 AD2d 355 [2d Dept 2000]); Taveras v Amir, 24 AD3d 655, 656 [2d Dept 2005]). Under VTL §1163, it is incumbent upon a driver to turn on the signal when making a left turn, and the failure to do so has been found to be sufficient to preclude the granting of summary judgment to a plaintiff on an argument that a rear ending collision is negligence against the rearward operator (Klochpin v. Masri, 45 AD3d 737 [2d Dept 2006]). But if defendant cannot come forward with any evidence to rebut the

inference of negligence, plaintiffs may properly be awarded judgment as a matter of law on the issue of liability (Lopez v Minot, 258 AD2d 564 [2d Dept 1999]).

Here, plaintiff's motion is supported by evidence that establishes prima facie entitlement to judgment as a matter of law on the undisputed facts that defendant rear ended plaintiff's car.

Accordingly, plaintiff has met his prima facie burden of establishing defendant's negligence, and plaintiff is entitled to summary judgment unless defendants present a nonnegligent explanation for the car accident.

Defendant offers no meritorious opposition to this summary judgment motion on the issue of liability, except that this matter should be tried before a jury.

Based upon the applicable case law, defendant fails to offer a non-negligent explanation for their vehicle rear ending plaintiff's vehicle (Williams v Spencer Hall, 113 A.D.3d 759, 760 [2d Dept 2014]). In conclusion, defendant failed to provide any admissible evidence as to any negligence on the part of plaintiff or to provide a non-negligent explanation for the accident sufficient to raise a triable question of fact (Grimm v Bailey, 105 AD3d 703 [2d Dept 2013]).

NOW, therefore for the above stated reasons, it is hereby

ORDERED, that the plaintiff's motion for partial summary judgment on the issue of liability is **granted**, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the issue of serious injury will be tried during the damages phase of the trial, and that the granting of this summary judgment motion does not preclude further determination that plaintiff may or may not have sustained serious injury as defined by Insurance Law §5102[d]; and it is further

ORDERED, that the parties are directed to appear in the Settlement Conference Part on March 10, 2020 at 9:15 A.M. in Courtroom 1600 of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601.

All matters not herein decided are denied. This constitutes the Decision and Order of the court.

Dated: January 8, 2019
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF