To commence the statutory period for appeals as of right under 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
PUTNAM COUNTY

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VELKA LACAYO-ALVAREZ, Index No. 500154/2019

Plaintiff,

-against- DECISION AND ORDER

KALYA KAJOL SEECHARAN, et al.,

Defendants.

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Zugibe, J.

The Following papers (Motion Sequence 001, Documents 9-16, 19-24) were considered upon hearing and deciding the instant motion.

Defendant Saulean's motion for summary judgment is granted. This case concerns a five-car "derivative" accident on the Saw Mill River Parkway. Plaintiff drove the third car in the chain, defendant Saulean drove the first car and codefendant Dhanaji drove the second car.

Apparently, there had been a prior accident a little further along the Parkway. Defendant Saulean, in his affidavit, avers that the traffic was moving much slower than the posted 55-miles-per-hour speed limit, about twenty miles per hour. As he tells the tale, the car in front of him stopped suddenly, causing him to brake suddenly as well. He avoided hitting the car and came to a full stop. He then looked into his rear-view mirror and saw codefendant Dhanaji, who defendant Saulean, claims had been driving too close at about one-half car length behind, hit him about five seconds after he stopped.

Essentially, defendant Saulean seeks very early summary judgment as the first car in the chain. The opposing codefendants argue that this motion is premature, that there is insufficient evidence concerning brake lights, and that defendant Saulean admits he stopped short, defeating his prima facie case as the first car in the chain and only struck in the rear.

This motion bring up two interlocking legal principles. First, liability may accrue to the first car in an accident chain when it stops short, destroying the prima facie case the first car in the chain usually enjoys. *See e.g.* , *Moran v. Singh*, 10 A.D.3d 707, 708 (2d Dep't 2004); *see also Pollard v. Independent Beauty & Barber Supply Co.*, 94 A.D.3d 845, 846 (2d Dep't 2012). Second, the circumstances of the short stop, coupled with the rear car driving too closely, can destroy the "stopped short" defense granted to later cars in the chain. As the Second Department has stated, "vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead." *Melendez v. McCrowell*, 139 A.D.3d 1018, 1021 (2d Dep't 2016).

For example, in *Cajas-Romero v. Ward*, 106 A.D.3d 850, 852 (2d Dep't 2013), the defendant claimed that he had stopped at a red light behind the plaintiff driving the front car. When the light turned green, they both went, and then a third car cut off the plaintiff, causing him to stop short. The defendant then hit the plaintiff in the rear. The Second Department reversed the motion court and granted liability summary judgment to the plaintiff. It found that even accepting the defendant's version of events as true, he was liable for following too closely and failing to maintain enough distance to stop in time. *See also Ner v. Celis*, 245 A.D.2d 278, 279 (2d Dep't 1997); *Sayyed v. Murray*, 109 A.D.3d 464, 465 (2d Dep't 2013) (front car stopping short no matter where second car hit a few seconds later).

In another case, the appellate division Fourth Department rules that slower than usual traffic gives a driver notice that stopping may be required and removed the "short stop" defense to a rear end collision. *See Greene v. Sivret*, 43 A.D.3d 1328, 1329 (4th Dep't 2007); *Shulga v. Ashcroft*, 11 A.D.3d 893, 894 (4th Dep't 2004) (admission of heavy traffic defeats the defense). Here, the only first-person version in this motion sequence was given by the first driver in the chain, defendant Saulean. In it, he avers that the traffic was heavy due to an accident in front of him and the merging of two lanes into one due to an emergency vehicle. The three codefendants answering the motion all chose to submit their opposition through their attorneys, and thus there is nothing in the record to contradict this version of events. Given the emergency vehicle's presence, the merge from two lanes to one, and the resulting speed only about thirty-five percent of the posted speed limit, codefendants should all have been aware that quick braking might be necessary, and they should have taken appropriate precautions. Codefendants cannot hide behind the prematurity defense when they failed to give any alternative factual versions to the Court concerning the accident.

Further, codefendants' various claims that this motion is premature, without more, cannot alone forestall the motion. As the Second Department has stated:

> A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant. The defendant's contention that the plaintiffs' motion was premature because the plaintiffs had not yet been deposed at the time the plaintiffs' motion was filed did not establish what information the defendant hoped to discover at the plaintiffs' depositions that would relieve him of liability in this case. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion.

Cajas-Romero v. Ward, 106 A.D.3d 850, 852 (2d Dep't 2013) (citations and internal grammatical marks omitted). Here, codefendants claim nothing other than speculation regarding what they may find upon deposing defendant Saulean. This is not a ground for denying summary judgment. The Court notes that he remains a witness that may be deposed as a non-party, and that any information gleaned from that could form the basis for a renewal motion. As of now, though, there is no reason to keep him in this matter based solely upon codefendants' speculation.

The foregoing constitutes the Decision and Order of the Court.

Dated: August 20, 2019
Carmel, New York

ENTER

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