At IAS Part 13 of the Supreme Court of the State of New York, Kings County, 320 Jay Street, Brooklyn, New York 11201, on the 26th day of February 2020.

PRESENT:

HON. BRUCE M. BALTER,
J.S.C.

X

CHRISTOPHER EDWARD GARCIA,

Plaintiff

-against-

CHARLES EDWARD ZUBA,

Defendant.

X

DECISION /ORDER
Index No.: 518927/2019
Motion Date: 02/04/2020
Motion Cal. No: 7
Motion Sequence: 1

Plaintiff's motion for an order, pursuant to CPLR §3212, granting him summary judgment on liability against defendant and striking Defendant's second, seventh and eighth affirmative defenses. Defendant opposes the motion.

FACTS AND PROCEDURAL HISTORY

The matter at Bar is for serious personal injuries sustained by Plaintiff, CHRISTOPHER EDWARD GARCIA ("GARCIA"), as a result of a motor vehicle accident on July 20, 2019, in which a vehicle owned and operated by Defendant, CHARLES EDWARD ZUBA ("ZUBA"), struck Plaintiffs vehicle in the rear at approximately 11:30 a.m. on the eastbound side of the upper level of the roadway known as the Verrazano Narrows Bridge in County of Kings. On the day of the subject accident, the weather was clear. It was not raining, and the roads were dry. As a result of this incident, the Plaintiff GARCIA, alleges that he sustained serious and permanent personal injuries, including but not limited to injuries to his neck, back, bilateral shoulders, left wrist, and left hand.

Plaintiff GARCIA commenced this action by serving a Summons and Verified Complaint, dated August 27, 2019. Defendant, ZUBA, interposed an Answer, dated September 16, 2019. In his Answer, Defendant admitted that, on the date of the subject accident, he owned a vehicle bearing New York State license plate number, HZZ2683, which was involved in the subject accident. The Answer admits that on the day of the subject accident, Defendant operated his vehicle at the location of the subject accident and that Defendant's vehicle, at the time and place alleged, came into contact with Plaintiffs vehicle. Defendant included nine affirmative defenses. The second alleges that "the injuries and damages allegedly sustained by plaintiff were caused in whole or in part by the culpable conduct of plaintiff, including negligence and assumption of risk, as a result of which the claim of plaintiff is therefore barred or diminished in

the proportion that such culpable conduct of plaintiff bears the total culpable conduct causing the alleged injuries and damages". Defendant's seventh affirmative defense alleges"that "defendant was confronted with an emergency situation. Under the emergency situation doctrine, a motorist faced with an emergency situation who acts without opportunity for deliberation to avoid an accident may not be charged with negligence if he or she acts as a reasonably prudent person would have acted under the same emergency conditions even though it appears afterwards that he or she did not take the safest course or exercise the best judgment. An emergency is when a motorist is confronted with a sudden and unforeseen condition not created by or contributed to by his or her own negligence". Lastly, Defendant's eighth affirmative defense alleges that "plaintiff's damages, if any, were caused by the culpable conduct of parties other than the defendant and over whom defendant had no control" .

No Note of Issue and Certificate of Readiness have been filed as of date. Plaintiff submits an affidavit in support of the motion. He points to a statement made by Defendant ZUBA against his interest to the police officer at the scene of the motor vehicle accident, who then inscribed said statement in a police report. Plaintiff submits the police report which sets forth that Defendant driver, ZUBA, states that he "Operator] [motor vehicle]#3 (Defendant, CHARLES EDWARD ZUBA) states Vehicle] #2 (Plaintiff, CHRISTOPHER GARCIA) struck Vehicle] #1 (non-party, Michael Lotierzo) and he was unable to stop in time..

STATUTORY AUTHORITY AND APPLICABLE CASE LAW

Vehicle and Traffic Law ("VTL") § 1129(a) recognizes the common sense principle that sufficient space should be maintained between a preceding vehicle and a following vehicle in order to avoid collision. VTL § 1129(a) states:

> The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

VTL § 1180(a) recognizes the common sense principle that the speed of vehicles must be constrained by the weather and traffic conditions then prevailing. VTL §1180 (a) states:

> No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

An operator of a motor vehicle is negligent as a matter of law when, without a non-negligent explanation, he causes his vehicle to hit-in-the-rear another vehicle. See New York Vehicle and Traffic Laws §§ 1129(a) and 1180(a), which direct that a driver of a motor vehicle should not follow another vehicle more closely than is reasonable and prudent, and should not drive a vehicle at a speed greater than is reasonable and prudent under the prevailing conditions, and having regard to the actual and potential hazards then existing. In order to prevail on a motion for summary judgment,"it is necessary that the movant establish his cause of action or

defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor..." See *Zuckerman v. City of New York,* 29 N.Y.2d 557,427 N.Y.S.2d 595 (1980). Summary judgment is designed to expedite all civil cases by eliminating from the trial Calendar claims which can be properly resolved as a matter of law. *Andre v. Pomeroy,* 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974). Pursuant to CPLR § 3212, summary judgment is appropriate where, as here, there are no genuine issues of material fact to be resolved at trial. Summary judgment will generally be granted where, upon the evidence submitted the cause of action or defense has been established sufficiently to warrant - the court, as a matter of law, in directing judgment in favor of any party.

The burden is on a party opposing summary judgment to produce evidentiary proof in admissible form sufficient to require a trial of material questions of faet, on which the opposing claim rests. See *Gilbert Frank Gorp. v. Federal Insurance Co.*, 70 N.Y,2d 966, 525 N.Y.S.2d 793 (1988); *Zuckerman v. City of New York,* 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). Bald conclusory assertions, general allegations, of negligence, expressions of hope or unsubstantiated allegations or assertions are all insufficient to defeat a motion for summary judgment. See *Snaulding v. Benenati*, 57 N.Y.2d 418, 456 N.Y.S.2d 733 (1982); *Rosenberg v. Rockville Centre Soccer Club,*560 N.Y.S.2d 856, 166 A.D.2d 570 (2nd Dept. 1990). While negligence cases do not generally lend themselves to resolution by motion for summary judgment, such a motion will be granted where the facts clearly point to the negligence of one party without any fault or culpable conduct by the other party. See *Goldberg v. Nelson*, 608 N.Y.S.2d 685, 202 A.D.2d 390 (2nd Dept. 1994); See also *Cummins v. Rose,* 586 N.Y.S.2d 988, 185 A.D.2d 839 (2nd Dept. 1992).

Generally, a rear-end collision creates a *prima facie* case of negligence with respect to the operator of the moving vehicle, and imposes a duty on the operator of the vehicle striking the forward vehicle to rebut the inference of negligence by providing a non-negligent explanation for the collision. See *Carhuavano v. J&R Hacking*, 28 A.D.3d 413, 813 N.Y.S.2d 162 (2nd Dept. 2006); See *Sekuler v. Limnos Taxi. Inc.*, 264 A.D.2d 389, 694 NI.Y.S.2d 100 (2nd Dept. 1999). 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 non-negligent explanation for the collision. See *Trumminello v, City of N.Y., 148* A.D;3d 1084, 49 N.Y.S.3d 739 (2nd Dept. 2017). Where a plaintiffs vehicle is struck in the rear by the defendant's vehicle, this gives rise to a presumption of negligence on the part of the defendant driver. See *Caias-Romerov. Ward*, 106 A.D.3d 850, 965 N.Y.S.2d 559 (2nd Dept. 2013); *Heam v, Mahzolillo*. 103 A.D.3d 689, 959 N.Y.S.2d 531 (2nd Dept. 2013).

This presumption of negligence on the part of the rear vehicle's driver requires that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision to overcome summary judgment for the plaintiff. See *Scheker v. Brown*, 85 A.D.3d 1007, 925 N.Y.S.2d 528 (2nd Dept. 2011). 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, requiring that operator to come forward with evidence of a non-negligent explanation for the collision in order to rebut the inference of negligence. See *Cruz v. Finney*, 148 AD.3d 772, 49

N.Y.S.3d 153 (2nd Dept. 2017), See also *Sineh v. Avis Rent a Car Svs.. Inc.*, 119 A.D.3d 768,989 N.Y.S.2d 302 (2nd Dept. 2014); *Markesinis v. Jauuez.* 106 A.D.3d 961, 965 N.Y.S.2d 363 (2nd Dept. 2013); *Neidereeer v. Misuraca.* 27 A.D.3d 537, 811 N.Y.S.2d 758 (2nd Dept. 2006).

"The emergency doctrine 'recognizes that, when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration ... the actor may not be negligent if the actions taken are reasonable and prudent. "It does not apply to situations where 'the defendant driver should reasonably have anticipated and been prepared to deal with the situation with which [he] was confronted.'" See Id. . "An emergency instruction is not proper where the situation is neither sudden nor unexpected or could have been reasonably anticipated in light of the surrounding circumstances". See *Hardy v. Sicuranza.* 133 A.D.2d 138, 518 N.Y.S.2d 812 (2nd Dept. 1987); *Smith v. Perfectaire* Co..270 A.D.2d 410, 410, 704 N.Y.S.2d 640, 641 (2nd Dept. 2000). The Second Department has held that "[t]he emergency doctrine applies only to circumstances where an actor is confronted by a sudden and unforeseen occurrence not of the actor's own making (see *Muve v. Libea* 282 A.D.2d 661, 723 N.Y.S.2d 510) " "It is typically not available to defendants in rear- end collisions (see Campanella v, Moore. 266 A.D.2d 423, 424, 699 N.Y.S.2d 76) particularly where [...] the driver was obligated to maintain a safe rate of speed and a reasonable distance between the vehicles (see Vehicle and Traffic Law § 1129; Pappas v. Opitz. 262 A.D.2d 471, 692 N.Y.S.2d 127; Sass v. Ambit Trans.. 238 AJD.2d 570, 657 N.Y.S.2d 69; Gage v. Raffenspereer. 234 A.D.2d 751, 752, 651 N.Y.S.2d 214)."

The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion. See *Arbizu v. REM Transp.. Inc.*.20 A.D.3d at 376, 799 N.Y.S.2d 231 (2nd Dept. 2005); *Kershis v. City of New York,* 303 A.D.2d 643, 756 N.Y.S.2d 786 (2nd Dept. 2003); *Associates Commercial Comm, v. Nationwide Mut Ins.* Co.. 298 A.D.2d 537, 539, 748 N.Y.S.2d 792 (2nd Dept. 2002). The burden is on a party opposing summary judgment to produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact, on which the opposing claim rests. *Gilbert Frank Comm, v. Federal Insurance Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). Bald conclusory assertions, general allegations of negligence, expressions of hope or unsubstantiated allegations or assertions are all insufficient to defeat a motion for summary judgment

ANALYSIS

Plaintiffs affidavit, submitted in support of the motion, demonstrates that Plaintiff GARCIA, was stopped due to traffic in front of him for approximately five seconds, when his stopped vehicle was hit in the rear by Defendant ZUBA. Defendant ZUBA had a responsibility to maintain a safe distance from the plaintiff's vehicle. Here, the evidence demonstrates that Defendant, ZUBA, struck the rear of Plaintiff's vehicle, causing Plaintiff to sustain serious personal injuries.

In opposition, Defendant submits the affidavit of Defendant ZUBA, stating that when he observed Plaintiff strike a vehicle in front of him, he "immediately applied his breaks but was unable to avoid contact with the rear of plaintiffs vehicle." However, the Second Department has held that "[although the existence of an emergency and the reasonableness of the response to it generally present issues of fact for purposes of application of the emergency doctrine [...], those issues may in appropriate circumstances be determined as a matter of law." See *Tsai v. Zone-Ling Duh,* 79 A.D.3d 1020, 913 N.Y.S.2d 748 (2nd Dept. 2010); *Davis v. Metro. Transit Auth.*.92 A.D.3d 825, 938 N.Y.S.2d 616 (2nd Dept. 2012).

In this instance, Defendant ZUBA, was required by the VTL to keep a reasonable distance between his vehicle and Plaintiff's vehicle, even if Plaintiff's vehicle "stops for whatever reason. Here, Defendant and Plaintiff' both state that Defendant struck the rear of Plaintiffs vehicle. Further, as Plaintiff was stopped due to traffic, any argument by Defendant regarding any element of contributory negligence should not be considered, as Plaintiff has provided a reasonable explanation for being stopped. It was incumbent upon Defendant herein to leave sufficient space between the front of his vehicle and the rear of Plaintiffs vehicle, and to control the speed of his vehicle, so that he could avoid a rear-end collision even if the Plaintiff did come to a sudden stop for any reason. Defendant, by his own concession, struck Plaintiffs stopped vehicle in the rear without there being any non-negligent explanation for the same and, as such, Plaintiff is entitled to summary judgment on the issue of liability.

It is evident that Defendant was following Plaintiffs vehicle too closely to brake In time in order to avoid the subject collision. Where there are differences in the accounts of the parties involved in an accident, this does not inherently preclude one party from obtaining summary judgment Rather, the determination must be made as to whether, under either version of the facts presented, the moving party is entitled to summary judgment. See *Jacino v. Sugerman.* A.D.3d 593, 781 N.Y.S.2d 663 (2nd Dept. 2004).

Defendant contends that there are differences in the accounts of Plaintiff and Defendant, in how the accident transpired. However, the undisputed facts show that Plaintiff was struck in the rear by Defendant's vehicle. It is also undisputed that Defendant,ZUBA, admitted to the police officer responding to the accident that he struck Plaintiff's vehicle because he was unable to stop in time. Moreover, it is undisputed that the only explanation for this accident offered by Defendant is that Plaintiff's vehicle stopped short in front of Defendant's vehicle. The Court finds that while there are differences in Plaintiff's and Defendant's account of the accident, none of these differences are material to the Court's determination of whether the Defendant ZUBA's negligence herein was the sole proximate cause of the accident and of Plaintiff's injuries. Thus, any such differences do not preclude Plaintiff herein from obtaining summary judgment as a matter of law since, under either version-Plaintiff or Defendant's-the sole proximate cause of the accident is Defendant's negligence.

Defendant ZUBA, admits to being negligent and that his negligence was the sole proximate cause of the accident by virtue of his abovementioned statement, which is not refuted or even addressed in his affidavit submitted with Defendant's opposition papers.

Plaintiff has provided sufficient facts to meet his burden of establishing entitlement to summary judgment on the issue of liability. The fact that the depositions of the parties remain outstanding is of no consequence as Defendant had the opportunity to submit his own affidavit. Further, the certified police report plainly states that Defendant ZUBA struck Plaintiff s vehicle in the rear and Plaintiff's and Defendant's sworn affidavit further confirm. Defendant does not offer any non-negligent explanation for the happening of the subject accident and, instead, only presents a different version of events that led him to strike Plaintiffs vehicle in the rear.

As there are no triable questions of fact outstanding as to the negligence of Defendant, ZUBA, and Plaintiff, GARCIA, has established his entitlement to summary judgment as a matter of law on the issue of liability given that Plaintiff has met his *prima facie* burden of showing that the sole proximate cause of the subject accident is Defendant's negligence, without Plaintiff negligently contributing thereto in any way. Here, Defendant, ZUBA, has clearly violated VTL § 1129(a) by following Plaintiffs vehicle too closely, and VTL § 1180(a) by driving his vehicle at a speed greater than was reasonable and prudent under the conditions thereat.

CONCLUSION

After a careful review of the motion, opposition, reply and oral arguments presented to the Court, it is clear that Defendant, ZUBA, caused the subject accident, and that there is no viable defense that Defendant could present at trial.

Accordingly, Plaintiff's motion for an Order granting Plaintiff, GARCIA, summary judgment as against Defendant, ZUBA, on the issue of liability pursuant to CPLR § 3212; (ii) striking Defendant's second, seventh, and eighth affirmative defenses is GRANTED.

This constitutes the Decision and Order of this Court.

February 26, 2020

KINGS COUNTY CLERK
FILED
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BRUCE M. BALTER, J.S.C.

HON. BRUCE M. BALTER
JUSTICE SUPREME COURT