To commence the statutory time 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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CHRISTIAN R. JONES,

Plaintiff,

- against -

MARY A HORTON and
NICOLE M. HORTON,

Defendants.

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INDEX NO. 51408/2020

DECISION/ORDER

Mot. Seq. 1
Submit Date: 9/09/2020

ECKER, J.

In accordance with CPLR 2219 (a), the decision herein is made upon considering all papers filed in NYSCEF relative to the motion of plaintiff CHRISTIAN R. JONES (Mot. Seq. 1), made pursuant to CPLR 3212, for an order granting summary judgment as to liability, as against MARY A. HORTON and NICOLE M. HORTON (defendants).

Plaintiff claims that he sustained serious injuries as a result of a motor vehicle accident that occurred on Purchase Street on the afternoon of December 13, 2019 in the Town/Village of Harrison. Plaintiff alleges that he was operating his vehicle, stopped at a red light behind an unknown vehicle signaling to make a left turn, when his vehicle was struck in the rear by an automobile owned by Mary Horton, and being operated by Nicole Horton. Consequently, plaintiff commenced this personal injury action. Defendants interposed an answer with general denials and four affirmative defenses, denying any liability.

Following a preliminary conference, plaintiff now moves for summary judgment as to liability against defendants. In support of his motion, he submits the pleadings, a certified police report, and his affidavit. He contends that he is entitled to judgment as a matter of law because the certified police report creates no issue of material fact inasmuch as defendants caused the rear-end collision and cannot rebut the inference of negligence or provide a nonnegligent explanation for the collision.

Defendants oppose, arguing that the motion is premature since discovery has not been completed and a full record has yet to be developed. They submit the stipulation so ordered by the Hon. Joan B. Lefkowitz, J.S.C. (NYSCEF Doc No. 15), which outlines the

discovery schedule and deadlines related thereto.[1] Defendants point out that the parties' examinations before trial are to be completed by October 2020.

"A plaintiff in a personal injury action who moves for summary judgment on the issue of liability has the burden of establishing, prima facie, both that the defendant was negligent and that he or she was free from comparative fault. Further, 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. A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on the operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*McLaughlin v Lunn*, 137 AD3d 757, 758 [2d Dept 2016] [internal quotation marks, brackets, and citations omitted]; *see* Vehicle and Traffic Law § 1129 [a]; *Pyo v Tribino*, 141 AD3d 639, 640 [2d Dept 2016]). "Where the driver of the offending vehicle lays the blame for the accident on brake failure, it is incumbent upon that party to show that the brake problem was unanticipated and that reasonable care was exercised to keep the brakes in good working order" (*Ballatore v HUB Truck Rental Corp*., 83 AD3d 978, 980 [2d Dept 2011] [internal quotation marks, ellipses, and citations omitted]).

"A nonnegligent explanation may include a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause. While a nonnegligent explanation for a rear-end collision may include evidence of a sudden stop of the lead vehicle, 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" (*Tumminello v City of New York*, 148 AD3d 1084, 1085 [2d Dept 2017] [internal quotation marks and citations omitted]). Importantly, "a conclusory assertion by the operator of a vehicle that the sudden stop of the vehicle caused the accident is insufficient on its own as a nonnegligent explanation" (*Gutierrez v Trillium, USA, LLC*, 111 AD3d 669, 670-671 [2d Dept 2013]).

Here, the certified police accident report reflects that plaintiff stated he "was stopped in traffic on Purchase Street when [defendants'] vehicle collided into the rear of [his] vehicle"; and Nicole Horton stated that she was "traveling northbound on Purchase Street when she observed [plaintiff's] vehicle stopped in traffic and attempted to stop her vehicle[,] but was unable to do so and collided into [plaintiff's] vehicle." In addition, plaintiff proffered his affidavit wherein he stated that defendants "struck [his] vehicle in the rear while stopped in traffic on Purchase Street" and that he "did not make any sudden or abrupt stops prior to the impact with [his] vehicle being hit in the rear." He confirmed in his affidavit the version of the accident that was set forth in the police report and affirmed

[1] The court notes that a compliance conference is scheduled for December 8, 2020.

that the facts therein are true of how the accident transpired. Based on the foregoing, plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability (*see Williams v Spencer-Hall*, 113 AD3d 759, 760 [2d Dept 2014]).

Defendants, in opposition, failed to raise a triable of fact as to liability or to rebut the inference of negligence by providing a nonnegligent explanation for the collision (*see Cortes v Whelan*, 83 AD3d 763, 764 [2d Dept 2011]). Critically, Nicole Horton did not submit her own affidavit setting forth her version, or rebutting plaintiff's version, of how the accident occurred (*see Williams v Spencer-Hall*, 113 AD3d at 761). Nor did defendants submit an affidavit from an individual with personal knowledge of the facts.

Moreover, the court rejects defendants' efforts to avoid summary judgment since mere speculation as to what disclosure may or may not reveal is insufficient. Defendants' bare assertion that plaintiff's version of the accident should be further examined at a deposition, without more, does not identify anything they sought to discover that would relieve them of liability (*see Richards v Burch*, 132 AD3d at 754 [2d Dept 2015]; *Cajas-Romero v Ward*, 106 AD3d 850, 852 [2d Dept 2013]). Moreover, defendants failed to demonstrate that other discovery may result in disclosure of relevant information pertinent to the accident (*see Turner v Butler*, 139 AD3d 715, 716 [2d Dept 2016]); nor did they make the requisite showing that relevant facts essential to justify opposition to the motion are exclusively within plaintiff's knowledge and control (*see* CPLR 3212 [f]; *Batashvili v Veliz-Palacios*, 170 AD3d 791, 793 [2d Dept 2019]; *Williams v Spencer-Hall*, 113 AD3d at 760-761). Their "mere hope or speculation that evidence sufficient to defeat" plaintiff's motion for summary judgment *may* be uncovered during the discovery process is insufficient to deny the relief sought (*Batashvili v Veliz-Palacios*, 170 AD3d at 793; *see Turner v Butler*, 139 AD3d at 716). Thus, plaintiff is entitled summary judgment as to liability against defendants.

Notwithstanding, the issue of damages is reserved for trial. Comparative fault on the part of plaintiff, if any, which would offset the amount of damages, must abide the trial (*see Perez v Persad*, 183 AD3d 771, 772 [2d Dept 2020]; *cf. Vailes v Molly Coll.*, 175 AD3d 1348, 1349 [2d Dept 2019]; *Edgerton v City of New York*, 160 AD3d 809, 811 [2d Dept 2018]). Here, plaintiff alleges in the complaint that that he sustained a "serious injury" within the meaning of Insurance Law § 5102 (d). Hence, the parties should proceed with discovery to facilitate the process of ascertaining the amount of damages, if any (*see Rodriguez v City of New York*, 31 NY3d 312, 318-319 [2018]; *Perez v Persad*, 183 AD3d at 772).

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by the parties was not addressed, it is hereby denied. Accordingly, it is hereby:

ORDERED that the motion of plaintiff CHRISTIAN R. JONES (Mot. Seq. 1), made pursuant to CPLR 3212, for an order granting summary judgment as to liability, as against defendants MARY A. HORTON and NICOLE M. HORTON, is granted; and it is further

ORDERED that the parties shall appear at the Compliance Conference Part of the Court on December 8, 2020 as was directed in the stipulation so ordered by the Hon. Joan B. Lefkowitz, J.S.C. (*see* NYSCEF Doc No. 15).

The foregoing constitutes the decision and order of the court.

Dated: October 15, 2020
White Plains, New York

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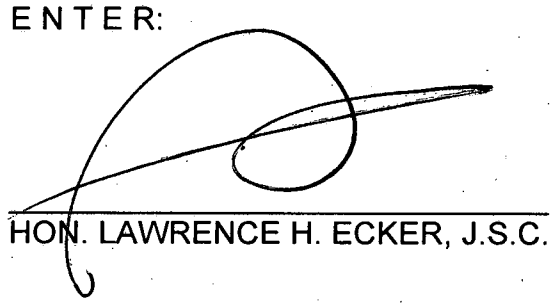

HON. LAWRENCE H. ECKER, J.S.C.

APPEARANCES:
Parties appearing via NYSCEF.