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.

Disp ____ Dec __x__ Seq. No. 1 Type partial SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

**PRESENT: HON. LINDA S. JAMIESON**

----------X

STANLEY BRUDER,

Plaintiff,

-against-

Index No. 69780/15

DECISION AND ORDER

MARTIN L. WILLIAMS,

Defendant.

----------X

The following papers numbered 1 to 4 were read on this motion:

| Paper | Number |
|---|---|
| Notice of Motion, Affidavit, Affirmation, and Exhibits | 1 |
| Memorandum of Law | 2 |
| Affidavit and Affirmation in Opposition | 3 |
| Reply Affirmation and Exhibits | 4 |

Plaintiff seeks summary judgment on liability in the car accident that occurred on July 28, 2015.

There is no dispute that this was a three-car accident in which defendant was the rear car. Defendant hit the Acura in front of him, driven by non-party John Hill, which rear-ended plaintiff. Plaintiff states in his affidavit that both he and the Hill car were stopped at the time of the impact. It is well-settled that "A rear-end collision with a stopped vehicle

creates a prima facie case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by *providing a non-negligent explanation for the collision." Perez v. Roberts*, 91 A.D.3d 620, 936 N.Y.S.2d 259 (2d Dept. 2012). Plaintiff has thus made a prima facie showing that defendant was negligent.

In opposition, defendant states in his affidavit that he was not responsible for the accident because he was cut off by non-party Hill when he was about 30-40 feet from the traffic light. He states that Hill failed to signal before changing lanes into his lane, and that "As a result of the Hill vehicle cutting me off, I attempted to switch lanes, but the Hill vehicle, suddenly and without warning, slammed on its brakes. In response, I also applied my brakes to avoid hitting the Hill vehicle, but my car ultimately came into contact with the rear of the vehicle."

Defendant's affidavit is, however, entirely contradicted by the certified police report. The police report contains two statements that are damning to defendant's new position. First, the officer clearly states in the report that he spoke to **all three** drivers at the scene, and they all said the same thing: that plaintiff and Hill were stopped at the time that defendant hit the Hill car. Second, and most importantly, the officer states that he reviewed the video footage from the car wash at the corner, which showed that plaintiff and Hill "were both

stopped in their vehicles. . . . Mr. Williams' vehicle was traveling westbound Boston Post Road when he rearended Mr. Hill's vehicle, causing Mr. Hill's vehicle to collide with Mr. Bruder's vehicle." It thus appears that defendant's affidavit, which contains an account that is utterly at odds with the certified police report, "was designed to raise feigned factual issues in an effort to avoid the consequences of the earlier admission contained in the police accident report. In opposition, the defendants failed to raise a triable issue of fact." *Buchinger v. Jazz Leasing Corp.*, 95 A.D.3d 1053, 1053, 944 N.Y.S.2d 316, 317-18 (2d Dept. 2012). See also *Garzon- Victoria v. Okolo*, 116 A.D.3d 558, 983 N.Y.S.2d 718 (1st Dept. 2014) ("Okolo's affidavit containing a different version of the facts appears to have been submitted to avoid the consequences of his prior admission to the police officer and, thus, is insufficient to defeat plaintiff's motion for partial summary judgment.").

Moreover, and not insignificantly, it is undisputed that plaintiff is in no way responsible for the accident. It is well-settled that "the rearmost driver in a chain-reaction collision bears a presumption of responsibility." *Ferguson v. Honda Lease Trust*, 34 A.D.3d 356, 357, 826 N.Y.S.2d 10, 11 (1st Dept. 2006). *See also Lehmann v. Sheaves*, 231 A.D.2d 687, 688, 647 N.Y.S.2d 557, 558 (2d Dept. 1996).

Finally, the motion is not premature, as defendant posits. "The defendants failed to demonstrate that additional discovery may lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered by further discovery is an insufficient basis for denying the motion." *Chou v. Ocean Ambulette Serv., Inc.*, 131 A.D.3d 1091, 1092-93, 16 N.Y.S.3d 593, 594 (2d Dept. 2015).

The motion is thus granted. The parties are directed to appear for a Preliminary Conference in the Preliminary Conference Part on July 11, 2016 at 9:30 a.m. in Courtroom 800.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
May 27, 2016

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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