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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GEICO A/S/O TRAVIS CAREY,

Plaintiff,

DECISION & ORDER
Index No. 58109/2020
Seq No.1

-against-

HARBHAJAN SINGH,

Defendants.

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WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Document Numbers 5-23, were read in connection with plaintiff's motion for summary judgment.

The instant action is for a certain sum for property damage incurred by plaintiff, Geico, in the amount of $30,024.22 , plus interest, costs, and disbursements, arising out of a rear-end motor vehicle accident that occurred on April 4, 2019, in the City of Rye. A 2019 GMC Acadia (bearing Connecticut license plate number AM56012) owned by the plaintiff subrogor, Travis Carey, was rear-ended by a 2017 Nissan suburban (bearing New York State license plate number T610113C) that was owned and operated by the defendant, Harbhajan Singh. Defendant's vehicle rear-ended the plaintiff subrogor's vehicle on southbound Interstate 95, and pushed it into another vehicle.

Plaintiff subrogor's vehicle was declared a total loss as a result of the accident. The fair market value was $37,905.27. Plaintiff subrogor, Carey, had a $500 deductible provided in the insurance policy, and Geico submitted proof of other ancillary costs including rental costs.

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]). 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 in admissible form "sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (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]).

Generally, 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" (VTL §1163; *see id.;* Colonna v Suarez, 278 AD2d 355, [2d Dept 2000]) ; Taveras v Amir, 24 AD3d 655, 656 [2d Dept 2005]) "A conclusory assertion by the operator of the following vehicle that the sudden stop of the vehicle caused the accident is insufficient, in and of itself, to provide a nonnegligent explanation"

(Gutierrez v Trillium USA, LLC, 111 AD3d 669, 670 [2d Dept 2013]). But, "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" (Gutierrez v Trillium USA, LLC, 111 AD3d at 671). However, the frontmost driver also has the duty to avoid stopping suddenly or slowing down without signaling to avoid a collision (Martinez v Allen, 163 AD3d 951, 952 [2d Dept 2018]).

Plaintiff submits that it is entitled to summary judgment on the issues of liability and damages. Through plaintiff's subroger's affidavit, he attests that his motor vehicle was rear ended by defendant's motor vehicle:

> "(O)n April 4, 2019, the defendant, Harbhajan Singh, followed too closely on Interstate 95, rear-ended my vehicle, and pushed my vehicle into another vehicle in my lane of travel. The April 4, 2019 motor vehicle accident was solely caused by the defendant" (NYSCEF#11).

Based upon this record, including the Affidavit of plaintiff's subroger, plaintiff is entitled to summary judgment, unless defendant presents a nonnegligent explanation for the accident. A nonnegligent explanation may include evidence of a mechanical failure, a sudden, unexplained stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other reasonable cause (Binkowitz v Kolb, 135 AD3d 884, 885 [2d Dept 2016]).

Based upon the applicable case law, defendants fail to offer a non-negligent explanation for their vehicle rear ending plaintiff's vehicle sufficient to raise a triable question of fact (Williams v Spencer Hall, 113 AD3d 759, 760 [2d Dept 2014]).

New York no longer mandates that plaintiff must disprove comparative negligence. The Court of Appeals has clarified that Article 14-A of the CPLR contains New York's codified comparative negligence principles, and that "a plaintiff's comparative negligence is no longer a complete defense to be pleaded and proven by the plaintiff, but rather is only relevant to the

mitigation of plaintiff's damages and should be pleaded and proven by the defendant" (Rodriguez v City of New York, 31 NY3d 312 [2018]). "To be entitled to partial summary judgment a plaintiff does not bear the double burden of establishing a prima facie case of defendant's liability and the absence of his or her own comparative fault" (Rodriguez v City of New York, *supra*). Thus, to be entitled to summary judgment on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault in establishing his or her prima facie case to the extent that the opposing party is negligent and a proximate cause of the incident (Edgerton v City of New York, 160AD3d 809 [2d Dept 2018]).

Therefore in light of the foregoing, it is hereby

ORDERED, that plaintiff's motion is granted to the extent that plaintiff Geico A/S/O TRAVIS CAREY awarded a judgment against defendant, Harbhajan Singh, in the sum certain of $30,024.22, plus costs and disbursements, as computed by the clerk of the court, and plaintiff shall have execution thereof; and it is further

ORDERED that plaintiff shall submit a copy of this Order and judgment with a bill of costs to the Westchester County Clerk for entry.

The Clerk shall mark his records accordingly.

All matters not herein decided are denied.

This constitutes the Decision and Order of the court.

Dated: March 8, 2021
White Plains, New York

Charles D. Wood
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HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF