SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice

PART 22

Index Number : 114547/2010
WILLIAMS-GRACE, PATRICE
vs.
ADAMALLAH, ABDALLAH
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for SJ

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3/20/13

HON. ARLENE P. BLUTH, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 22

----------X

Patrice Williams-Grace,

Plaintiff,

-v-

Abdallah Adamallah, Larry Brunson and James Edward Fann,

Defendant.

Index No. 114547/10
Mot. Seq. 002

Hon. Arlene P. Bluth, JSC

On April 21, 2010 at about 10:30am on East 127th Street between Second and Third Avenues in Manhattan there was a chain-reaction three car accident. Plaintiff and defendant Adamallah were stopped at a red light when a vehicle operated by defendant Brunson rear-ended Adamallah causing Adamallah's car to be propelled into plaintiff's car.

In this motion, defendant Adamallah moves for summary judgment to dismiss the case and any cross-claims against him. As the middle car, he denies any liability for the accident. For the following reasons, defendant Adamallah's motion for summary judgment is granted.

In order to prevail on its motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact. *Alvarez v Prospect Hospital,* 68 NY2d 320, 508 NYS2d 923 (1986). Once the movant demonstrates entitlement to judgment, the burden shifts to the opponent to rebut that prima facie showing. *Bethlehem Steel Corp. v Solow*, 51 NY2d 870, 872, 433 NYS2d 1015 (1980). In opposing such a motion, the party must lay bare its evidentiary proof. Conclusory allegations are insufficient to defeat the motion; the opponent must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact. *Zuckerman v. City of New York,* 49 NY2d 557 at 562, 427 NYS2d 595 (1980).

In deciding the motion, the court must draw all reasonable inferences in favor of the non-moving party and must not decide credibility issues. (*Dauman Displays, Inc. v Masturzo,* 168 AD2d 204, 562 NYS2d 89 [1st Dept 1990], *lv. denied* 77 NY2d 939, 569 NYS2d 612 [1991]). As summary judgment is a drastic remedy which deprives a party of being heard, it should not be granted where there is any doubt as to the existence of a triable issue of fact (*Chemical Bank v West 95th Street Development Corp.,* 161 AD2d 218, 554 NYS2d 604 [1st Dept 1990]), or where the issue is even arguable or debatable (*Stone v Goodson,* 8 NY2d 8, 200 NYS2d 627 [1960]).

It is well settled that a rear-end collision with a stopped or stopping vehicle creates a presumption that the operator of the following vehicle was negligent; in order to rebut that presumption, the following vehicle's operator must proffer a non-negligent explanation for his or her involvement in the accident (*Corrigan v Porter Cab Corp.*, 101 AD3d 471, 955 NYS2d 336 [1st Dept 2012], *Agramonte v City of New York*, 288 AD2d 75, 732 NYS2d 414 [1st Dept 2001]). As applied here, in order to rebut the presumption of negligence, defendant Adamallah must come forward with a non-negligent reason for rear-ending the plaintiff.

In support of the motion, defendant Adamallah submits his deposition transcript and plaintiff's deposition transcript. It is uncontested that both plaintiff and Adamallah were stopped at the red light. Adamallah left about three feet between the front of his car and the back of plaintiff's car. A car operated by Brunson failed to stop and instead hit the rear of Adamallah's car, causing Adamallah's car to be propelled about three feet and into the rear of plaintiff's car. It is also uncontested that Adamallah did not have his foot jammed on the brake while waiting for the light and his car skidded into plaintiff's car; Adamallah testified that he skidded because "my foot wasn't on the brake that much. It was on the brake but not that much." (transcript,

exhibit I, page 44 lines 3-5).

Plaintiff's opposition to the motion argues that there are two issues which should be left for the jury to decide. First, plaintiff argues that the jury must decide whether defendant having his foot on the brake "not that much" was negligent. Second, plaintiff argues that the jury must decide whether leaving "three measly feet" between cars was negligent.

The jury need not decide those issues. In *Katz v Masada II Car & Limo Service, Inc.*, 43 AD3d 876, 877, 841 NYS2d 370, 372 (2nd Dept. 2007), the court held:

> Under these circumstances, where a stopping vehicle is rear-ended and propelled into the vehicle in front of it, such facts provide a non-negligent explanation sufficient to relieve the operator of the stopping vehicle from liability (see *Harris v. Ryder*, 292 A.D.2d 499, 739 N.Y.S.2d 195; *Campanella v. Moore*, 266 A.D.2d 423, 699 N.Y.S.2d 76; *Escobar v. Rodriguez*, 243 A.D.2d 676, 664 N.Y.S.2d 568). Thus, the appellants established their entitlement to judgment as a matter of law dismissing the cross claims insofar as asserted against them.

In Katz, the vehicle was stopping, and he was propelled into the car in front of him when he was rear-ended. So whether Adamallah was stopped with his foot jammed on the break, whether his foot was lightly resting on the break pedal or whether he was rolling to a stop is immaterial – the reason he hit the plaintiff's car was because he was hit in the rear; there is no evidence that he would have hit plaintiff had he not been struck.

As for the three feet of distance Adamallah left between his car and the car in front of him, the fact is that the rearmost car hit with sufficient force to propel him three feet, not three inches - obviously with force to spare, since plaintiff claims injuries. Thus plaintiff only speculates that if more space had been left, then the force would have not been great enough to

propel Adamallah that far and with such force. But how much more? Considering Adamallah has the right to assume that he would not be rear-ended, plaintiff cannot argue – and has not argued here – that any particular distance was safe. Plaintiff has not provided a single case in support of her position. In essence, plaintiff claims that no matter how far back Adamallah was, it was not far enough and that a jury must decide how far was enough. This Court disagrees. Under the circumstances presented here, it is immaterial whether Adamallah was two feet, three feet or five feet from the plaintiff.

Because there is no question that defendant Adamallah, who was stopped at a red light three feet behind plaintiff, and was propelled into plaintiff's car by co-defendant, this Court finds that Adamallah has sufficiently rebutted the presumption of negligence against him and has demonstrated his entitlement to judgment as a matter of law dismissing all claims against him.

Accordingly, it is

ORDERED that defendant Adamallah's motion for summary judgment is granted and all claims against him are dismissed.

This is the Decision and Order of the Court.

Dated: **March 20, 2013**
New York, NY

ARLENE P. BLUTH, JSC