SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH _____ **PART** 22
Justice

Index Number : 108435/2011
CRUMBS, MONTELL M.
vs.
HYDE, FRANCINE S.
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

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

The following papers, numbered 1 to 3 **, were read on this motion to/for** pl MSJ on liability

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: 4/5/13

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

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 NY
COUNTY OF NEW YORK: PART 22

Index No.: 108435/11
Mot. Seq. 001

Montell M. Crumbs and Gabrielle Crumbs,
Plaintiffs,

-against-

Francine Hyde,
Defendant.

DECISION/ORDER

HON. ARLENE P. BLUTH, JSC

Plaintiffs' motion for summary judgment on the issue of liability is granted.

In this action, plaintiff Montell Crumbs seeks damages for personal injuries he allegedly sustained when he was struck by defendant who made a left turn into his path while he was proceeding through the intersection of Riverside Drive and West 76th Street in Manhattan. Plaintiff Gabrielle Crumbs asserts a derivative claim. In support of their motion, plaintiffs claim that defendant was negligent as a matter of law, and that defendant's negligence was the sole proximate cause of the subject accident.

In order to prevail on a 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]).

In support, plaintiffs cite to deposition testimony from both Mr. Crumbs and defendant, and to a statement from an eyewitness to the accident. At his deposition, Mr. Crumbs testified as follows: Just before the accident he was riding his motorcycle, proceeding north on Riverside Drive, a two-way street. As he approached the intersection with 76th Street, he saw that the traffic light was green, and observed defendant's car only a fraction of a second before the impact when defendant, traveling southbound on Riverside Drive, made a left turn into the intersection and into his northbound lane (exh D to moving papers, T. 26-40). He further stated that upon seeing defendant's car turning into his lane, he immediately braked but was unable to stop in time as defendant's car was only five feet away from him (T. 42-44).

Defendant testified that she did not see Mr. Crumbs as she proceeded southbound on Riverside Drive until after she began her turn and immediately before impact (exh E, T. 20-22). She further testified that she began to brake after she started making her left turn onto West 76th Street, but was moving when she first saw Mr. Crumbs, and that the front middle part of her vehicle came into contact with Mr. Crumbs (T. 26-28, 31-32).

Plaintiffs also submit an affidavit from an eyewitness, Bekim Ahmetaj (exh G) who

stated, inter alia, that defendant made a sharp-left hand turn onto West 76th Street in an attempt to "beat out the oncoming northbound traffic", thus causing this accident, and that Mr. Crumbs was not speeding.

In opposition, defendant fails to present the existence of an issue of fact which would require a jury to determine. At her deposition defendant did not testify that Mr. Crumbs was speeding; it is just something that she "deduced" (T. At 55, lines 8-19). Additionally, she admitted that she never saw Mr. Crumbs until immediately before the collision, after she made a left turn into his path (T. 20-22).

Vehicle and Traffic Law §1141 provides:

> The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.

Here, plaintiffs demonstrated their prima facie entitlement to judgment as a matter of law by establishing that defendant violated Vehicle and Traffic Law § 1141 when she made a left turn directly into Mr. Crumbs's path as he was legally proceeding into the intersection with the right of way. *See Griffin v Pennoyer*, 49 AD3d 341, 852 NYS2d 765 (1st Dept 2008). As Mr. Crumb had the right-of-way, he was entitled to anticipate that defendant would obey the traffic laws, which required her to yield to plaintiff's vehicle. *See Marafioti v Reisman,* 2008 WL 695534, NY Slip Op. 30654(U) (Supreme Ct, Nassau County [2008]), citing *Berner v Koegel*, 31 AD3d 591, 819 NYS2d 89 (2d Dept 2006).

Accordingly, because defendant has not rebutted plaintiffs' prima facie showing of defendant's liability, it is hereby

ORDERED that plaintiffs' motion for summary judgment on the issue of liability is granted.

This is the Decision and Order of the Court.

Dated: April 5, 2013
New York, New York

HON. ARLENE P. BLUTH, JSC