SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

SCOTT DAMBROSE,

Plaintiff,

- against -

GENEVIEVE GINSBURG, TYRONE L. LYONS, VICTORIA A. LYONS, CHARLES DAMBROSE and STANCO SYSTEMS ELECTRICAL CONTRACTING, INC.,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 19091/08
Motion Seq. Nos.: 01, 02, 03
Motion Dates: 03/29/10
04/23/10
06/04/10

The following papers have been read on these motions:

	Papers Numbered
Notice of Motion for Summary Judgment, Affirmation and Exhibits	1
Affirmation in Opposition by Defendant Ginsberg	2
Notice of Motion for Summary Judgment, Affirmation and Exhibits	3
Affirmation in Opposition by Defendant Ginsberg	4
Notice of Cross-Motion, Affirmation and Exhibits	5
Affirmation in Opposition by Defendants Lyons	6
Affirmation in Reply	7
Affirmation in Reply to Opposition of Plaintiff	8
Affirmation in Reply and in further Support of Motion to Dismiss	9

Upon the foregoing papers, it is ordered that the motions are decided as follows:

The motions by defendants Charles Dambrose ("Dambrose") and Stanco Systems Electrical Contracting, Inc. ("Stanco") and defendants Tyrone L. Lyons ("Lyons") and Victoria A. Lyons ("Ms. Lyons"), both seeking to dismiss the plaintiff's complaint and all cross claims as to them are granted for the reason set forth herein.

The cross motion by plaintiff for partial summary judgment on the issue of liability,

collectively against all defendants is denied as moot as to defendants Lyons, Stanco and Dambrose, but granted as to defendant Genevieve Ginsberg ("Ginsberg").

Plaintiff commenced this action for personal injuries incurred in an auto collision that occurred on December 3, 2007, at approximately 6:00 a.m, on Rockaway Boulevard near the intersection of Brookville Boulevard, Queens, N.Y. Plaintiff was a back seat passenger in a vehicle owned by defendant Stanco and operated by defendant Dambrose. Defendant Stanco's vehicle was involved in an accident with at least two other vehicles in the collision. The first vehicle was owned by defendant Lyons and operated by defendant Ms. Lyons (the "Lyons vehicle"). The Lyons vehicle, the frontmost or first of the three vehicles, had come to a stop to avoid impact with some stopped and/or disabled vehicles. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit F pp. 17-20. Defendant Ms. Lyons stated an SUV (later identified as defendant Stanco's vehicle), had come to a screeching halt behind the Lyons vehicle. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit F pp. 23 and 24. Defendant Stanco's vehicle did not strike the Lyons vehicle at its initial stop. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit F p. 23. Defendant Ms. Lyons contends she applied "more than a normal brake" pressure to stop her vehicle. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit F p. 22.

The third vehicle in the "chain" was driven by defendant Ginsburg. Defendant Ginsburg stated she reached a high speed of 25-30 miles per hour. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit G pp.19 and 20. She also testified that it was raining. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit G p. 18. Defendant Ginsberg claimes that defendant Stanco's vehicle, immediately in front of

defendant Ginsburg's vehicle, suddenly stopped and defendant Ginsburg slammed on the brakes. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit G p. 21. Defendant Ginsburg stated that she applied the brakes two seconds before impact. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit G pp. 45 and 47.

Thus, defendant Ginsburg's vehicle struck defendant Stanco's vehicle (in which plaintiff was a passenger) and defendant Stanco's vehicle, in turn, hit the Lyons vehicle.

Defendant Lyons and defendant Ms. Lyons, defendant Stanco and defendant Dambrose contend the collision was caused by defendant Ginsburg's negligence and thus they are entitled to summary relief.

Defendant Ginsburg alleges that the impetus to the chain collision was defendant Ms. Lyons coming to a sudden unexpected stop which caused defendant Dambrose, the drive of defendant's Stanco vehicle (which had been following too closely at a high rate of speed) (*see* Defendant Stanco and defendant Dambrose Affirmation in Support Exhibit C pp. 30-31 where plaintiff estimated the Stanco vehicle may have been traveling at 50 miles per hour before it stopped) to jam on the brakes causing defendant Ginsburg to hit defendant Stanco's vehicle which in turn hit defendant Lyons's vehicle.

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 pursuant to New York State Vehicle and Traffic Law ("VTL") § 1129(a). *See Krakowska v. Niksa*, 298 A.D.2d 561, 749 N.Y.S.2d 55 (2d Dept. 2002); *Bucceri v. Frazer*, 297 A.D.2d 304, 746 N.Y.S.2d 185 (2d Dept. 2002).

A rear end collision with a stopped vehicle establishes a *prima facie* case of negligence on the part of the operator of the offending vehicle. *See Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610 (2008). Such a collision imposes a duty of explanation on the operator. *See Hughes v. Cai*, 55 A.D.3d 675, 866 N.Y.S.2d 253 (2d Dept. 2008); *Gregson v. Terry,* 35 A.D.3d 358, 827 N.Y.S.2d 181 (2d Dept. 2006); *Belitsis v. Airborne Express Freight Corp.*, 306 A.D.2d 507, 761 N.Y.S.2d 329 (2d Dept. 2003).

Of course, in a rear-end collision, the frontmost driver has the duty not to stop suddenly or slow down without proper signaling, pursuant to VTL § 1163, so as to avoid a collision. *See Gaeta v. Carter*, 6 A.D.2d 576, 775 N.Y.S.2d 86 (2d Dept. 2004); *Purcell v. Axelsen*, 286 A.D.2d 379, 729 N.Y.S.2d 495 (2d Dept. 2001).

As noted, a rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the rearmost vehicle, thereby requiring the operator to rebut the inference of negligence by providing a non-negligent explanation for the collision. *See Francisco v. Schoepfer*, 30 A.D.3d 275, 817 N.Y.S.2d 52 (1st Dept. 2006); *McGregor v. Manzo*, 295 A.D.2d 487, 744 N.Y.S.2d 467 (2d Dept. 2002).

Vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since the following driver is under a duty to maintain a safe distance between his or her car and the car ahead. *See Shamah v. Richmond County Ambulance Service, Inc.*, 279 A.D.2d 564, 719 N.Y.S.2d 287 (2d Dept. 2001).

Drivers must maintain safe distances between their cars and the cars in front of them and this rule imposes on them a duty to be aware of traffic conditions including stopped vehicles. *See* VTL § 1129(a); *Johnson v. Phillips*, 261 A.D.2d 269, 690 N.Y.S.2d 545 (1st Dept. 1999).

Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident. *See Filippazzo v. Santiago*, 277 A.D.2d 419, 716 N.Y.S.2d 710 (2d Dept. 2000).

In the context of a rear end collision, a claim that the driver of the lead vehicle made a sudden stop, stranding alone, is insufficient to rebut the presumption of negligence. *See Campbell v. City of Yonkers*, 37 A.D.3d 750, 833 N.Y.S.2d 101 (2d Dept. 2007); *Ayach v. Ghazal*, 25 A.D.3d 742, 808 N.Y.S.2d 759 (2d Dept. 2006); *Rainford v. Han*, 18 A.D.3d 638, 795 N.Y.S.2d 645 (2d Dept. 2005).

In a chain reaction collision, responsibility rests with the rearmost driver. *See Mustafaj v. Driscoll*, 5 A.D.3d 138, 773 N.Y.S.2d 26 (1st Dept. 2004).

A driver's claim that the vehicle in front had a "pretty sudden" stop is insufficient to raise a triable issue of fact. S*ee Neidereger v. Misuraca*, 27 A.D.3d 537, 811 N.Y.S.2d 758 (2d Dept. 2006). As is the excuse that the front vehicle stopped short. *See Leal v. Wolff*, 224 A.D.2d 392, 638 N.Y.S.2d 110 (2d Dept. 1996).

One of the several non-negligent explanations for a rear-end collision is a sudden stop of the lead vehicle. *See Chepel v. Meyers*, 306 A.D.2d 235, 762 N.Y.S.2d 95 (2d Dept. 2003).

As noted, conclusory assertions that the driver of the lead vehicle made a sudden unexpected stop is, without more, insufficient to rebut the presumption of negligence. *See Vecchio v. Hildebrand*, 304 A.D.2d 749, 758 N.Y.S.2d 666 (2d Dept. 2003); *McGregor v. Manzo, supra; Dileo v. Greenstein*, 281 A.D.2d 586, 722 N.Y.S.2d (2d Dept. 2001); *Shamah v Richmond County Ambulance Services, Inc., supra.*

The Appellate Division, Second Department, has held that the explanation that the stopped vehicle came to a sudden stop, standing alone, is insufficient to rebut the inference of

negligence. See *Geschwind v Hoffman*, 285 A.D.2d 448, 727 N.Y.S.2d 155 (2d Dept. 2001). Thus, a sudden stop coupled with other evidence, such as a failure to comply with the Vehicle and Traffic Law with respect to proper signaling (*see Purcell v. Axelsen, supra*), or stopping in high speed traffic (*see Mundo v. City of Yonkers*, 249 A.D.2d 522, 672 N.Y.S.2d 128 (2d Dept. 1998) or in response to an emergency created by a non-party (*see Kienzle v. McLoughlin*, 202 A.D.2d 299, 610 N.Y.S.2d 771 (1st Dept. 1994)) can all constitute a non-negligent explanation for the rear-end collision. None of these conditions exist herein.

When a vehicle is stopped, anyone traveling behind the stopped vehicle is charged with the duty of coming to a timely halt. *See Edney v. Metropolitan Suburban Bus Authority*, 178 A.D.2d 398, 577 N.Y.S.2d 102 (2d Dept. 1991). Absent an excuse, it is negligence as a matter of law if a stopped vehicle is hit in the rear. *See DeAngelis v. Kirschner*, 171 A.D.2d 593, 567 N.Y.S.2d 457 (1st Dept. 1991). The same is true when the rear-end collision occurs with the offending vehicle striking a vehicle coming to a stop. *See Chepel v. Meyers*, *supra*. The record reflects that defendant Stanco and defendant Lyons's vehicles were stopped in traffic when struck.

Here, defendant Lyons's vehicle did not come to a sudden, "unexplained" stop. *See Mundo v. City of Yonkers, supra*. It stopped to avoid a disabled vehicle and it was compelled to wait behind the disabled vehicle due to heavy traffic in the next left lane.

Defendant Dambrose indicated defendant Stanco's vehicle was doing ten miles per hour (since the vehicle had just left a red traffic signal that had turned green). *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit E p. 19.

When defendant Dambrose first "saw" defendant Lyons's vehicle apply the brakes, the defendant Stanco vehicle was a car length away. *See* Defendant Lyons and defendant Ms.

Lyons's Affirmation in Support Exhibit E p. 19. Defendant Dambrose saw the brake lights of defendant Lyons's vehicle. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit E pp.18 and 19. Defendant Dambrose applied his brakes in a "heavy way" but defendant Stanco's vehicle did not skid. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit E p. 20.

Plaintiff stated he did not know but guessed the speed of defendant Stanco's vehicle was fifty miles per hour prior to its slowing down. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit D pp.30 and 31.

Defendant Ginsburg saw the brake lights of the defendant Stanco vehicle two seconds before her collision with it. *See* Defendant Lyons and defendant Ms. Lyons's Affirmation in Support Exhibit G pp. 51 and 54.

The "chain reaction" here involved three vehicles in a row. The first vehicle, defendant Lyons's vehicle, "signaled" the stop via the brake lights. The second vehicle, defendant Stanco's vehicle, also "signaled" the stop via brake lights to defendant Ginsburg's vehicle. There was no invasion of the area between the vehicles by someone (a police cruiser) abruptly cutting in or changing lanes and greatly reducing the vehicle's speed. *See Tutrani v. County of Suffolk, supra.* Thus, the distance or area between each vehicle herein was not suddenly reduced by another invading vehicle.

As to defendant Stanco's vehicle, plaintiff stated defendant Dambrose was doing fifty miles per hour before he, defendant Dambrose, began to slow down and defendant Dambrose stated the defendant Stanco vehicle was doing ten miles per hour when he, defendant Dambrose, saw defendant Lyons's vehicle's brake lights. At whatever speed, it is not disputed that defendant Dambrose brought his vehicle to a non-skid (with some screeching") safely behind

defendant Lyons's vehicle.

Here, defendant Stanco's vehicle had safely and successfully come to a complete stop behind defendant Lyons's vehicle when, after a few seconds, defendant Stanco's vehicle was struck and propelled into defendant Lyons's vehicle. Thus any purported negligence on the part of defendant Dambrose was not the proximate cause of the collision or the injuries. *See Ianello v. O'Connor*, 58 A.D.3d 684, 871 N.Y.S.2d 667 (2d Dept. 2009); *Katz v. Masada II Car & Limo Service, Inc.*, 43 A.D.3d 876, 841 N.Y.S.2d 370 (2d Dept. 2007); *Hyeon Hee Park v. Hi Taek Kim*, 37 A.D.3d 416, 831 N.Y.S.2d 422 (2d Dept. 2007). Thus, defendant Stanco's vehicle, driven by defendant Dambrose, should not be held liable for plaintiff's alleged injuries.

Here, as noted, defendant Dambrose stated he saw the brake lights of defendant Lyons's vehicle. Defendant Ginsburg stated she saw the brake lights of defendant Stanco's vehicle. Thus, both defendant Lyons's vehicle and defendant Stanco's vehicles both "signaled" their respective intentions to slow down and/or stop.

Clearly, defendant Ginsburg failed to raise a triable issue of fact by alleging that defendant Stanco's vehicle's failure to "signal" its braking was a proximate cause of the collision. *See Filippazzo v. Santiago, supra.* Defendant Stanco's vehicle properly "signaled" per VTL § 1163.

In defendant Ginsburg's case, conclusory allegations in opposition do not rebut the inference of negligence created by the unexplained rear-end collision. *See Macauley v. Elrac, Inc.*, 6 A.D.3d 584, 775 N.Y.S.2d 78 (2d Dept. 2004).

Here, defendant Ginsburg's vehicle did not suffer an "unavoidable skid" on a wet pavement. *See Briceno v. Milbry*, 16 A.D.3d 448, 791 N.Y.S.2d 622 (2d Dept. 2005).

Defendant Ginsburg should have factored in her speed and the fact that the wet weather

could cause a reduced stopping time and she should have left more space between her vehicle and defendant Stanco's vehicle.

The record herein reflects that defendant Ginsburg, for her speed and conditions, was too close to defendant Stanco's vehicle.

In the absence of evidence to the contrary, a party who establishes that he or she was not negligent in the operation of his or her vehicle is entitled to summary judgment. *See Dinham v. Wagner*, 48 A.D.3d 349, 851 N.Y.S.2d 538 (1st Dept. 2008). This includes the defendant Stanco vehicle driven by defendant Dambrose and the defendants Lyons and Ms. Lyons.

This constitutes the decision and order of this Court.

ENTER:

DENISE L. SHER
A,J.S.C.

Dated: Mineola, New York
July 15, 2010