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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice

PART 22

Index Number : 100464/2011
MAI, JIN FANG
vs.
SAUL, ANDREW M.
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 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: 3/22/13

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

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Jin Fang Mai and Tian-Qi Pan,

Plaintiffs,

Index No. 100464/11
Mot. Seq. 002

-v-

Andrew M. Saul and Toyota Motor Credit Corporation,

Defendants.

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

This action arises from a rear end auto collision that occurred on the Major Deegan Expressway on July 20, 2010. Plaintiff Mai was the operator and plaintiff Pan was the owner of a vehicle that was struck from behind by a vehicle owned and operated by defendant Saul. Defendant Toyota Motor Credit Corporation is no longer a party.

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]).

In support of the motion, plaintiff submits the transcript of her deposition testimony (exh D to moving papers) wherein she stated that as she was driving in the left lane of the Major Deegan Expressway, the car in front of her stopped and then plaintiff stopped her car. She further stated that her car was completely stopped for three seconds before she was struck from behind by defendant (T. at 20, 21, 25). It is well settled that a rear-end collision with a stopped vehicle creates a presumption that the operator of the moving vehicle was negligent (*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]). Therefore, plaintiff Mai, through her affidavit, made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that her stopped vehicle was rear-ended by defendant.

In opposition, defendant submits his affidavit (exh C to opp); while he admits rear-ending plaintiff's vehicle, he attempts to demonstrate a non-negligent explanation for the accident. Defendant states that just before the accident occurred he was following plaintiff in the left lane of traffic, and that they were both traveling at 50 miles per hour. Additionally, he states "I was a reasonable distance behind her. Traffic was moving and there was no congestion. I could see traffic ahead of plaintiff's car was moving (sic). Suddenly, the plaintiff came to an abrupt stop on the highway for no reason. I saw no brake light come in back of plaintiff's car" (aff., paras. 1-

4). Although defendant slammed on his breaks, he was "unable to stop".

This narrative fails to rebut the inference of negligence by providing a non-negligent explanation for the collision (*Profita v Diaz*, 100 AD3d 481, 954 NYS2d 40 [1st Dept 2012]). The law is clear: the claim that the vehicle in front stopped suddenly is insufficient to raise a triable issue of fact (*see Cabrera v Rodriguez*, 72 AD3d 553, 900 NYS2d 29 [1st Dept 2010]). Moreover, Vehicle and Traffic Law § 1129 imposes "a duty to be aware of traffic conditions, including vehicle stoppages" (*Johnson v Phillips*, 261 AD2d 269, 271, 690 NYS2d 545 [1st Dept 1999]). Nowhere is there any explanation as to why defendant failed to maintain a safe distance between his vehicle and plaintiff's vehicle (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432, 913 NYS2d 163 [1st Dept 2010]; *Soto–Maroquin v Mellet*, 63 AD3d 449, 449–450, 880 NYS2d 279 [1st Dept 2009]).

Defendant's counsel also argues that not every rear-end case is the sole fault of the rear driver, and that sometimes a jury must determine questions of fact. The Court wholeheartedly agrees with this statement; however, this defendant has failed to fulfill his burden of showing that there are any factual issues for a jury to determine or any factual issues which would otherwise cause this Court to deny plaintiffs' motion. Defendant does not claim, for example, that he was hit in the rear and then pushed into plaintiff's car, or that plaintiff violated any traffic rules which could not have been anticipated by defendant. By merely saying at his deposition that he "can't remember [plaintiff's] brake lights going on" (T. at 12, lines 18-21), defendant has not demonstrated that plaintiff's brake lights were not working at the time of the accident. Plaintiff says that she saw the car ahead of her in the left lane suddenly stop, jammed on her brakes to avoid a collision, and was stopped for three seconds when she was rear-ended by defendant;

defendant says plaintiff stopped short and he rear-ended her. There is nothing for a jury to determine with respect to defendant's liability.

Accordingly, it is

ORDERED that plaintiffs' motion for summary judgment on the issue of liability is granted; and it is hereby

ORDERED that the parties are directed to appear at the conference scheduled for April 10, 2013 at 80 Centre Street at 9:30AM.

This is the Decision and Order of the Court.

Dated: **March 22, 2013**
New York, NY

ARLENE P. BLUTH, JSC