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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. ROY S. MAHON**

**Justice**

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| **FAYDERICAL LOGAN,** | **TRIAL/IAS PART 8** |
| | **INDEX NO. 16780/08** |
| **Plaintiff(s),** | |
| | **MOTION SEQUENCE** |
| **- against -** | **NO. 1** |
| **MICHAEL T. MAMMONE and JAMIE FALLOWS,** | **MOTION SUBMISSION DATE: June 2, 2009** |
| **Defendant(s).** | |

**The following papers read on this motion:**

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| **Notice of Motion** | **X** |
| **Affirmation in Opposition** | **X** |
| **Reply Affirmation** | **X** |

Upon the foregoing papers, the motion by plaintiff for an Order granting plaintiff, summary judgment on the issue of liability against defendants' Michael T. Mammone and Jamie Fallows setting this matter down for an Inquest on damages immediately upon plaintiff's filing of a Note of Issue, is determined as hereinafter provided:

This personal injury action arises out of a rear end collision that occurred on April 10, 2009 at approximately 9:00 am on Peninsula Boulevard at or near its intersection with South Franklin Street, Hempstead, New York.

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in **Stewart Title Insurance Company, Inc. v. Equitable Land Services, Inc., 207 AD2d 880, 616 NYS2d 650, 651 (Second Dept., 1994):**

> "It is well established that a party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607,

467 N.Y.S.2d 944), but once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York, supra*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718)."

The defendant Jamie Mammone s/h/a Jamie Fallows at said defendant's deposition set forth:

"Q. Now, you just testified that your right front bumper came into impact with the plaintiff's left rear bumper?
MS. CLEMENT: Just note my objection. I think she said right front to the left front. I don't think she said a specific part of the car, but go ahead.
MR. WILSON: Withdrawn.
Q. Where did your car come into contact with the plaintiff's car at the time of the accident?
A. The right front of mine, left back of her's.
MS. CLEMENT: What part of your car?
A. There wasn't a dent or a scratch in my vehicle, so I wouldn't be able to tell you.
Q. Were you turning at this time or switching lanes?
A. I was.
Q. At the time that your vehicle came into impact with plaintiff's vehicle, where was your right foot?
MS. CLEMENT: At the actual moment of impact?
MR. WILSON: Yes.
A. On the brake.
Q. On the brake?
A. On the brake.
Q. Before impact -- I know you don't have a time frame -- but let's just say thirty seconds before impact -- can you tell me your approximate rate of speed?
A. 1 mile an hour, less than 1 mile an hour. We were stopped. All cars on the street were stopped.
Q. Can you describe the traffic for that day? Was it - -
A. Heavy. It was bumper to bumper.
Q. What type of day was it? Was it sunny; was it raining; was it cloudy? What was the weather? Were the roads dry?
MS. CLEMENT: Just note my objection to the form.
A. Roads were dry.
Q. What type of day was it?
A. Mid-cloudy, sunny.
Q. And you said that the road conditions were dry?
A. Dry.
Q. And you said in the moments before the impact you were doing 1 mile per hour?
MS. CLEMENT: Just note my objection to the form of the question. She already testified that.
MR. WILSON: It's asked and answered, okay.
Q. Even though you were doing 1 mile per hour right before impact, you still

came into contact with plaintiff's car?
MS. CLEMENT: Just note my objection to the form of the question. I don't know what you're asking her.
Q. You stated before that you were doing 1 mile per hour; is that correct?
A. Huh-huh.
Q. And even though you were going at this rate of speed, the accident –
MS. CLEMENT: Objection; argumentative. I don't know what you're going after. You're just rephrasing what she's already testified to.
MS. WILSON: No. I'm asking her as far as she's seen her thirty seconds before - -
We can go off the record.
(Whereupon a discussion was held off the record)
Q. The first time you saw my client's car, was here vehicle stopped or was it in motion?
A. Her vehicle was stopped."

*See deposition transcript of Jamie Mammone at pgs 19-23*

In examining the issue of a rear end collision, the Court in **Leal v Wolff**, 224 AD2d 392, 638 NYS2d 110 (Second Dept., 1996) stated:

> "A rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred (*see Gambino v City of New York, 205 AD2d 583, 613 NYS2d 417; Starace v Inner Circle Qunexions, 198 AD2d 493, 604 NYS2d 179; Edney v Metropolitan Suburban Bus Auth., 178 AD2d 398, 577 NYS2d 102; Benyarko v Avis Rent A Car Sys., 162 AD2d 572, 573, 556 NYS2d 761).* The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision (*see, Pfaffenbach v White Plains Express Corp., 17 NY2d 132, 135, 269 NYS2d 115, 216 NE2d 324)* because he or she is in the best position to explain whether the collision was due to a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on a wet pavement, or some other reasonable cause (*see, Carter v Castle Elec. Contr. Co., 26 AD2d 83, 85, 271 NYS2d 51).* If the operator of the moving vehicle cannot come forward with any evidence to rebut the inference of negligence, the plaintiff may properly be awarded judgment as a matter of law (*see, Starace v Inner Circle Qonexions, supr at 493, 604 NYS2d 179; Young v City of New York, 1131 AD2d 833, 834, 493 NYS2d 585)."*
>
> **Leal v Wolff, supra at pgs 111-112**

A review of the foregoing and the respective submissions set forth that the defendant Jamie Mammone has not rebutted the inference of negligence arising from the rear-end collision in issue (see, **Leal v Wolff**, supra). As such, to the extent that the plaintiff seeks an Order pursuant to the provisions of CPLR §3212 on the issue of liability, is **granted**.

Counsel for the respective parties shall appear for the previously ordered **Court Conference on June 23, 2009 in Part 8 at 9:30 a.m.**

SO ORDERED.

DATED: 6/8/2009

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J.S.C.