

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. EDWARD W. MC CARTY, III
Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

DAVID N. COCKEREL,

Plaintiff(s)

-against-

INDEX No. 18835/2003
Action #1

DENISE R. MARROW and ALAN WESLEY
CALDWELL,

Defendant(s)

MOTION DATE: 12/16/05
MOTION SEQ.#003

DENISE MARROW,

Plaintiff(s)

-against-

INDEX No. 2954/04
Action #2

ALAN WESLEY CALDWELL

Defendant(s)

The following papers read on this motion:

| | |
|--------------------------------------|---|
| Notice of Motion/Order to Show Cause | X |
| Cross-Motion | |
| Answering Affidavit | X |
| Replying Affidavits | |

Motion by defendant Marrow for an order granting summary judgment dismissing plaintiff's complaint and any cross claims against her is denied.

This personal injury action arises from a three car accident which took place on March 30, 2002 on Uniondale Avenue in Uniondale.

According to plaintiff's deposition testimony, he was at a complete stop due to traffic conditions when he "heard a bam" and then not quite a second later he heard "like a second bam" and felt a contact to the rear of his vehicle and his vehicle was pushed forward. Just prior to the accident, plaintiff had glanced in the rearview mirror and saw

defendant Marrow's vehicle stopped less than half a car length behind him. Plaintiff testified at deposition that he felt one impact.

Defendant Marrow testified at her deposition that she was stopped at the time of the accident and that her vehicle was hit in the rear and then bumped the back of plaintiff's stopped vehicle.

Defendant Caldwell testified at his deposition that before he hit defendant Marrow's vehicle in the rear, he heard "the sound of a crash in front of me". After hearing that noise, defendant Caldwell jammed on his brakes, but hit defendant Marrow's stopped vehicle in the rear.

The deposition testimony of the parties raises a triable issue of fact with respect to the cause of the accident. There is an issue of fact as to whether the vehicle driven by defendant Marrow hit the rear of plaintiff's vehicle before or after Marrow's vehicle was hit in the rear by defendant Caldwell's vehicle. Therefore, summary judgment must be denied. *Sterrett v Safe Chrysler Plymouth*, 289 AD2d 396.

Date 1-16-06

ENTERED

JAN 19 2006 EDWARD W. McCARTY III

NASSAU COUNTY
COUNTY CLERK'S OFFICE

J.S.C.