SHORT FORM ORDER

INDEX NO. 3222/2006

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:
HON. JOSEPH FARNETI
Acting Justice Supreme Court

JULIA LEE,

Plaintiff,

-against-

JEFFREY TURNER,

Defendant.

ORIG. RETURN DATE: SEPTEMBER 27, 2006
FINAL SUBMISSION DATE: FEBRUARY 8, 2007
MTN. SEQ. #: 001
MOTION: MG

PLAINTIFF'S ATTORNEY:
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DEFENDANT'S ATTORNEY:
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Upon the following papers numbered 1 to 5 read on this motion FOR SUMMARY JUDGMENT.
Notice of Motion and supporting papers 1-3; Answering Affidavits and supporting papers 4;
Replying Affidavits and supporting papers 5; it is,

ORDERED that this motion plaintiff for an Order, pursuant to CPLR 3212, granting summary judgment in favor of plaintiff and against defendant as to the issue of liability only, is hereby **GRANTED** for the reasons set forth herein.

This action was commenced to recover for injuries allegedly sustained as a result of motor vehicle accident that occurred on December 23, 2003 at the intersection of Straight Path and Little East Neck Road in Babylon, New York. Plaintiff alleges that the accident occurred when the vehicle owned and operated by defendant entered the intersection while the traffic light was red and collided with the vehicle operated by plaintiff. As such, plaintiff alleges that there exists no material issues of fact with respect to defendant's liability, and seeks summary judgment in favor of plaintiff on that issue. In support thereof, plaintiff has submitted an affidavit of plaintiff, as well as a certified copy of the

police accident report which contains sworn witness statements of the parties from the date of the accident corroborating the facts as presented by plaintiff. Plaintiff alerts the Court that defendant, in his sworn statement, admits that he thought the light was green, and that he tried to stop in time to avoid hitting plaintiff's vehicle, but was unable.

In opposition, defendant argues that this motion is premature in that the matter is still in the early stages of discovery and examinations before trial of the parties have not yet been conducted. In addition, defendant submits that the police report relied upon constitutes inadmissible hearsay, and that the witness statement of defendant itself establishes a question of fact with regard to the color of the traffic light at the time of the accident, therefore precluding summary judgment in favor of plaintiff.

On a motion for summary judgment, the test to be applied is whether or not triable issues of fact exist or whether on the proof submitted a court may grant judgment to a party as a matter of law (CPLR 3212[b]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Andre v Pomeroy*, 35 NY2d 361 [1974]; *Akseizer v Kramer*, 265 AD2d 356 [1999]). It is well-settled that a proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidentiary proof in admissible form to demonstrate the absence of any material issues of fact (*Dempster v Overview Equities, Inc.*, 4 AD3d 495 [2004]; *Washington v Community Mut. Sav. Bank*, 308 AD2d 444 [2003]; *Tessier v N.Y. City Health and Hosps. Corp.*, 177 AD2d 626 [1991]). Once this 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 the existence of material issues of fact which require a trial of the action (*Gong v Joni*, 294 AD2d 648 [2002]; *Romano v St. Vincent's Med. Ctr.*, 178 AD2d 467 [1991]; *Commrs. of the State Ins. Fund v Photocircuits Corp.*, 2 Misc 3d 300 [Sup Ct, NY County 2003]).

In the case at bar, the Court finds that plaintiff has made a *prima facie* showing of entitlement to judgment as a matter of law on the issue of liability (*see e.g. Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Andre v Pomeroy*, 35 NY2d 361, *supra*; *Rodriguez v N.Y. City Transit Auth.*, 286 AD2d 680 [2001]). Plaintiff has established, by evidence in admissible form, that the traffic light was green for her vehicle and red for defendant's vehicle at the time of the accident (*see Sheehan v Marshall*, 9 AD3d 403 [2004]; *White v Clyburn*, 284 AD2d 328 [2001]; *King v Dalton*, 267 AD2d 208 [1999]). Although defendant is correct that

the statements contained in the police report constitute inadmissible hearsay (*Hanly v Quaker Chem. Co., Inc.*, 29 AD3d 860 [2006]; *Gomez v Sammy's Transp., Inc.*, 19 AD3d 544 [2005]; *State Farm Mut. Auto. Ins. Co. v Langan*, 18 AD3d 860 [2005]), plaintiff has also submitted an affidavit of plaintiff in support of the instant application, a witness statement of plaintiff from the date of the accident indicating that defendant "ran a red light," and a witness statement of defendant indicating that he "thought the light was green" and tried to stop but could not in time.

As such, the burden then shifted to defendant to establish, by competent evidence in admissible form, the existence of material issues of fact that would warrant a trial on the issue of liability. Here, defendant has failed to do so. Defendant has submitted an affirmation of counsel in opposition to the instant motion, but has failed to submit an affidavit of someone with personal knowledge of the essential facts to demonstrate the existence of any material issues of fact that would preclude the granting of summary judgment to plaintiff as to the issue of liability. Counsel's affirmation in opposition, made without personal knowledge of the facts, is without any evidentiary value and is insufficient to defeat a motion for summary judgment (*see S. J. Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338 [1974]; *Moran v Man-Dell Food Stores, Inc.*, 293 AD2d 723 [2002]; *Hoffman v Eastern Long Island Transp. Enter.*, 266 AD2d 509 [1999]; *Cataldo v Waldbaum, Inc.*, 244 AD2d 446 [1997]).

Furthermore, although defendant urges a denial of the motion, speculating as to what might be revealed during examinations before trial of the parties, the mere hope or speculation that evidence sufficient to defeat a motion for summary judgment motion may be uncovered during the discovery process is insufficient to deny the motion or to postpone a decision on the motion (*see Arbizu v REM Transp.*, 20 AD3d 375 [2005]; *Kershis v City of New York*, 303 AD2d 643 [2003]; *Associates Commercial Corp. v Nationwide Mut. Ins. Co.*, 298 AD2d 537 [2002]). Accordingly, this motion by plaintiff for summary judgment on the issue of liability only is granted.

The foregoing constitutes the decision and Order of the Court.

Dated: April 26, 2007

HON. JOSEPH FARNETI
Acting Justice Supreme Court