

Kononenko v Grippo
2018 NY Slip Op 31149(U)
May 16, 2018
Supreme Court, Kings County
Docket Number: 521020/2017
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 16th day of May, 2018.

PRESENT:

HON. CARL J. LANDICINO,

Justice.

-----X

VASILY KONONENKO,

Plaintiff,

Index No.: 521020/2017

DECISION AND ORDER

- against -

NANCY ANN GRIPPO and
JOSETTE GRIPPO,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	<u>1/2</u>
Opposing Affidavits (Affirmations).....	<u>3</u>
Reply Affidavits (Affirmations).....	<u>4</u>

Upon the foregoing papers, and after oral argument, the Court finds as follows:

This lawsuit arises out of a motor vehicle accident that allegedly occurred on July 26, 2017. Plaintiff Vasily Kononenko (hereinafter “the Plaintiff”) alleges in his Complaint that on that date he suffered personal injuries after he was struck while a pedestrian crossing the intersection of Avenue U and Mill Avenue in Brooklyn, New York. The Plaintiff alleges that he was struck by a vehicle owned by Defendant Josette Grippo and operated by Defendant Nancy Ann Grippo (hereinafter “the Defendants”).

The Plaintiff now moves for an order pursuant to CPLR § 3212 granting summary judgment on the issue of liability, and proceeding to trial on the issue of damages. The Plaintiff argues that the Defendants are liable for the incident since the Plaintiff was walking in the pedestrian crosswalk with a walk signal when the Defendant allegedly made a left turn and struck the Plaintiff. The Plaintiff argues that the Defendants have violated Vehicle and Traffic Law §1112(a) and VTL §1146(a) since the vehicle allegedly struck the Plaintiff while he was a pedestrian with the right of way in a pedestrian crosswalk. In opposition, the Defendants argue that the motion should be denied as there are triable issues of fact that should prevent this Court from granting summary judgment at this time. Also, the Defendants argue that the motion is premature because discovery has not been completed.

“Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it ‘should only be employed when there is no doubt as to the absence of triable issues of material fact.’” *Kolivas v. Kirchoff*, 14 AD3d 493 [2nd Dept, 2005], *citing Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2nd Dept, 2004], *citing Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

In general, “[a] violation of the Vehicle and Traffic Law constitutes negligence as a matter of law.” *Colpan v. Allied Cent. Ambulette, Inc.*, 97 A.D.3d 776, 777, 949 N.Y.S.2d 124, 125 [2nd Dept. 2012]. Vehicle and Traffic Law § 1146(a) provides that “[n]otwithstanding the provisions of any other law to the contrary, every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary.” What is more, Courts have held that a

pedestrian who can show that they were crossing the street in a crosswalk with the traffic signal in their favor has met their prima facie burden for summary judgment. *See Chou v. Ocean Ambulette Serv., Inc.*, 131 A.D.3d 1091, 1092, 16 N.Y.S.3d 593, 594 [2nd Dept, 2015]; *Qamar v. Kanarek*, 82 A.D.3d 860, 861, 918 N.Y.S.2d 360 [2nd Dept, 2011]; *Klee v. Americas Best Bottling Co.*, 60 A.D.3d 911, 875 N.Y.S.2d 270, 271 [2nd Dept, 2009]; *Voskin v. Lemel*, 52 A.D.3d 503, 859 N.Y.S.2d 489, 490 [2nd Dept, 2008].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented to establish, *prima facie*, that Plaintiff's actions as a pedestrian on the day in question were without negligence as a matter of law. In support of the Plaintiff's motion, there is an Affidavit from the Plaintiff in which the Plaintiff states (Plaintiff's Motion, Exhibit A, Paragraph 5) that "[a]fter the pedestrian signal changed in my favor, I observed that Avenue U was free from approaching vehicles in each direction and that it was safe to cross the street." What is more, the Plaintiff alleges in her Affidavit (Plaintiff's Motion, Exhibit A, Paragraph 9) that "[a]t the time I was struck by defendant's vehicle I was completely within the cross walk and the pedestrian signal was in my favor." By this testimony "[t]he Plaintiff has established his prima facie entitlement to summary judgment by presenting proof that he was walking within a crosswalk when he was struck by the defendants' vehicle and that he had looked for approaching traffic before he began to cross." *Abramov v. Miral Corp.*, 24 A.D.3d 397, 398, 805 N.Y.S.2d 119, 119 [2nd Dept, 2005].

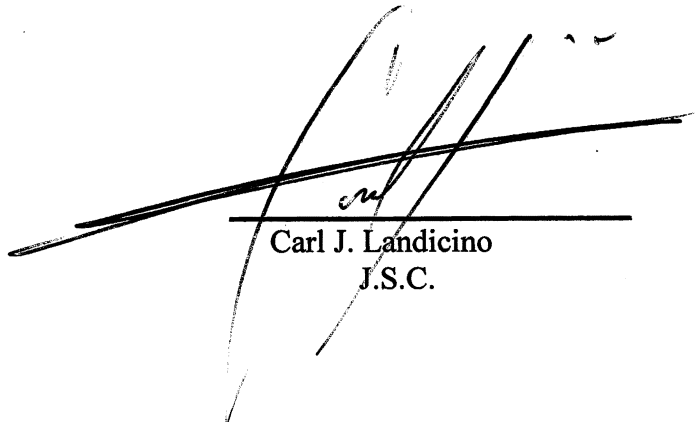
In opposition, insufficient proof in admissible form has been submitted to establish an issue of fact that would prevent this Court from granting summary judgment. What is more, the Court finds that the motion is not premature given the fact that the "defendants failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff." *Turner v. Butler*, 139 A.D.3d 715, 716, 32 N.Y.S.3d 174, 175 [2nd Dept, 2016].

Based on the foregoing, it is hereby ORDERED as follows:

The motion for summary judgment by the Plaintiff is granted. The matter shall proceed to a trial on damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino
J.S.C.

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