

Quinones v Brown

2019 NY Slip Op 30648(U)

February 14, 2019

Supreme Court, Kings County

Docket Number: 513839/2017

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 14th day of February, 2019.

PRESENT:

HON. CARL J. LANDICINO,

Justice.

-----X
WANDA QUINONES,

Plaintiff,

Index No.: 513839/2017

- against -

DECISION AND ORDER

TRAVIS J. BROWN,

Defendant.

Motion Sequence #2
-----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>

After a review of the submitted papers the Court determines as follows:

This action concerns a motor vehicle accident that occurred on August 18, 2015. On that day, the Plaintiff, Wanda Quinones (hereinafter the "Plaintiff") while operating the vehicle that she owned, was involved in a rear end collision with a vehicle owned and operated by Defendant Travis J. Brown (hereinafter the "Defendant") The Plaintiff alleges that at the time of the incident, her vehicle was stopped at a stop sign on Whipple Street at or near the intersection with Flushing Avenue, in Brooklyn New York. The Plaintiff now moves for summary judgment (Motion Sequence #2) on the issue of liability. In opposition, the Defendant contends that the motion should be denied as premature.

It has long been established that “[s]ummary 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.2d320, 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].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2nd Dept, 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See *Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 A.D.3d 518, 520, 824 N.Y.S.2d 166, 168 [2nd Dept, 2006]; see *Menzel v. Plotnick*, 202 A.D.2d 558, 558–559, 610 N.Y.S.2d 50 [2nd Dept, 1994].

Generally, in relation to summary judgment motions, “where facts essential to justify opposition to a motion for summary judgment are exclusively within the knowledge and control of the movant, summary judgment may be denied.... This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion.” *Juseinoski v. New York Hosp. Med. Ctr. of Queens*, 29 A.D.3d 636, 637, 815 N.Y.S.2d 183, 184-85 [2nd Dept, 2006], citing *Baron v. Incorporated Vil. of Freeport*, 143 A.D.2d 792, 792–793, 533 N.Y.S.2d 143 [2nd Dept, 1988]. However, this is generally only applicable if further would lead to information not in the possession of the opponent of the motion. See *Cajas-Romero v. Ward*, 106 A.D.3d 850,

852, 965 N.Y.S.2d 559, 561 [2nd Dept, 2013]; *Boorstein v. 1261 48th St. Condo.*, 96 A.D.3d 703, 704, 946 N.Y.S.2d 200, 202 [2nd Dept, 2012]. The Defendant has failed to show that this requirement has been met in the instant proceeding.

Turning to the merits of the Plaintiff's motion, the Court finds that the movant has provided sufficient evidence to meet her *prima facie* burden. The Court finds that the deposition testimony presented in support of the motion is sufficient to establish the movant's *prima facie* burden. Additionally, the Defendant has "failed to demonstrate that discovery may lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the defendant." *Boorstein v. 1261 48th St. Condo.*, 96 A.D.3d 703, 704, 946 N.Y.S.2d 200, 202 [2nd Dept, 2012].

It is axiomatic that, "[a] rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision." *Klopchin v. Masri*, 45 A.D.3d 737, 737, 846 N.Y.S.2d 311, 311 [2nd Dept, 2007]. Even assuming, *arguendo*, that the Police Accident Report attached to the Plaintiffs' motion is not admissible, given that the Police Officer did not witness the alleged incident (*see Adobea v. Junel*, 114 A.D.3d 818, 980 N.Y.S.2d 564 [2nd Dept, 2014]), the examination before trial of the Plaintiff is sufficient for the Plaintiff to establish a *prima facie* showing. *See Martinez v. Allen*, 163 A.D.3d 951, 82 N.Y.S.3d 130 [2nd Dept, 2018].

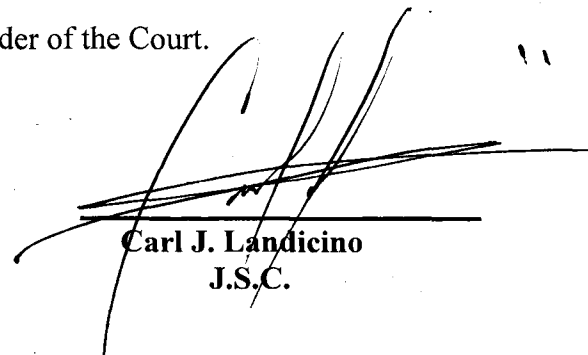
In opposition to the motion, the Defendant has failed to raise a material issue of fact that would prevent this Court from granting the motion. What is more, the Defendant presents no affidavit in support of his position. This, without more, is insufficient to raise an issue of fact that would prevent this Court from granting summary judgment to the movant. *See Hakakian v. McCabe*, 38 A.D.3d 493, 494, 833 N.Y.S.2d 106, 107 [2nd Dept, 2007]; *see also Tumminello v. City of New York*, 148 A.D.3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2nd Dept, 2017].

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

Plaintiff's Motion (motion sequence #2) is granted. The Plaintiff is awarded summary judgment on the issue of liability and the matter shall proceed on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino
J.S.C.

KINGS COUNTY CLERK
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