

Khan v Roszkowski
2019 NY Slip Op 30703(U)
March 8, 2019
Supreme Court, Kings County
Docket Number: 503963/2017
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 8th day of March, 2019.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

-----X
ABDUL KHAN,
Plaintiff,

Index No.: 503963/2017

- against -

DECISION AND ORDER

KRZYSZTOF ROSZKOWSKI and PV
HOLDING CORP.,
Defendants.
-----X

Motion Sequence #4

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.....	1/2, _____
Opposing Affidavits (Affirmations).....	3 _____
Reply Affidavits (Affirmations).....	4 _____

After a review of the submitted papers and oral argument, the Court determines as follows:

This action concerns a motor vehicle accident that occurred on March 20, 2014. On that day, the Plaintiff, Abdul Khan (hereinafter the "Plaintiff") was operating a vehicle owned by non-party Felix Gerald. Plaintiff was involved in a rear end collision with a vehicle owned by Defendant PV Holding Corp. (hereinafter "Defendant PV") and operated by Defendant Krzysztof Roszkowski (hereinafter the "Defendant Roszkowski") (collectively hereinafter "Defendants"). The Plaintiff alleges that at the time of the incident, his vehicle was stopped in heavy, stop-and-go traffic, for approximately one minute, while he was traveling on the Van Wyck Expressway, Queens County, New York. Plaintiff alleges that while stopped, his vehicle was hit in the rear by

the Defendants' vehicle. The Plaintiff now moves for summary judgment (Motion Sequence #4) on the issue of liability. In opposition, the Defendant contends that the motion should be denied as there are material issues of fact including, *inter alia*, that the accident was part of a multi-vehicle collision.

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.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].

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].

Turning to the merits of the Plaintiff's motion, the Court finds that the movant has provided sufficient evidence to meet his *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. The Plaintiff states that he was stopped for a minute, did not stop short and was hit in the rear by

Defendants' vehicle. He further states that when he was hit his vehicle was forced into the rear of the vehicle in front of him.

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]. 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]. Moreover, Defendant Roszkowski has been precluded from offering testimony at trial or offering an affidavit in opposition to a dispositive motion¹.

In opposition to the motion, the Defendants have failed to raise a material issue of fact that would prevent this Court from granting the motion. What is more, the Defendants present no affidavit in support of their position. *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]. The Defendants contend that the fact that this accident was part of a multi-vehicle accident, raises a material issue of fact. The Court finds that contention to be without merit. Plaintiff clearly indicates that he was hit in the rear and forced into a collision with the car in front of him. There is no evidence that Plaintiff was in any way comparatively negligent. The mere fact that there was a multi-vehicle collision, does not, in and of itself, create an issue of fact. *See, Sanford v. Stillitano*, 241 A.D.2d 489, 660 N.Y.S.2d 67 (2d Dept. 1997) and *Fonteboa v. Nugget Cab Corp.*, 123 A.D.3d 759, 999 N.Y.S.2d 113 (2d Dept. 2014) Further,

¹By Order of the Honorable Kathy J. King, J.S.C. (June 6, 2018), Defendant Roszkowski was precluded as a consequence of not providing proof of death of Defendant Roszkowski, which death had apparently been alleged by Counsel to Defendants.

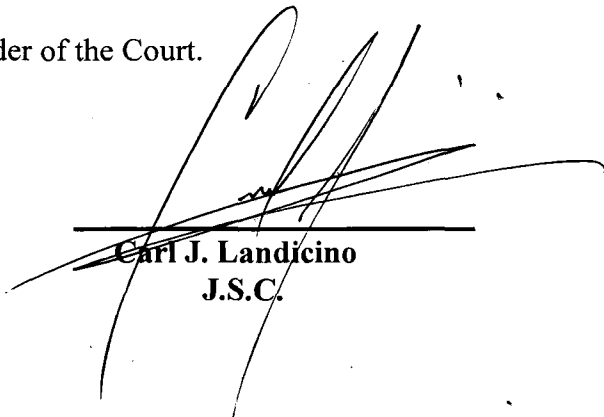
Defendants' other contentions are similarly conclusory. See, *Stretch v. Tedesco*, 263 A.D.2d 538, 693 N.Y.S.2d 203 (2d Dept. 1999)

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

Plaintiff's Motion (motion sequence #4) 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.

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