

Amirova v JND Trans Inc.

2019 NY Slip Op 32519(U)

August 1, 2019

Supreme Court, Kings County

Docket Number: 508101/2018

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 1st day of August, 2019.

PRESENT:
HON. CARL J. LANDICINO,

Justice.

-----X
TAMILA AMIROVA,
Plaintiff,

Index No.: 508101/2018

DECISION AND ORDER

- against -

Motions Sequence #1,

JND TRANS INC and OTABEK ABDAZIMOV,
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.....	1/2.
Opposing Affidavits (Affirmations).....	3.
Reply Affidavits (Affirmations).....	_____

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 December 27, 2017. Plaintiff Tamila Amirova (hereinafter "the Plaintiff") alleges in her Complaint that on that date she suffered personal injuries after the vehicle she was operating collided with a vehicle operated by Defendant Otabek Abdazimov and owned by Defendant JND Trans Inc. (hereinafter the "JND Defendants"). The Plaintiff further alleges in her complaint that the collision occurred at the intersection of Ocean Avenue and Dorchester Road, Brooklyn, New York.

The Plaintiff moves (motions sequence #1) 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 contends that summary judgment should be granted in favor of the Plaintiff on the issue of liability given that the Plaintiff's motor vehicle was rear ended while stopped, which

demonstrates liability in favor of the Plaintiff. In opposition, the JND 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. Specifically, the JND Defendants contend that the Plaintiff stopped short immediately prior to the accident at issue.

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 instant motion, the Court finds that sufficient evidence has been presented to establish, *prima facie*, that the JND Defendants breached a duty to the Plaintiff

to stop or yield the right of way to the Plaintiff. *See Dominguez v. CCM Computers, Inc.*, 74 A.D.3d 728, 729, 902 N.Y.S.2d 163, 164 [2nd Dept, 2010]. In support of its application, the Plaintiff relies on the Plaintiff's deposition and a Police Accident Report. When asked how long she was stopped before the accident occurred, the Plaintiff testified (Plaintiff's motion, Exhibit C, Page 17) that she was stopped for "[a]bout thirty seconds to a minute." 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]. This is because "[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].

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 Defendants present no affidavit in support of their position. The JND Defendants rely on the MV104 report and the police accident report. As stated above, the police accident report is inadmissible. What is more, the MV104 report, which was not otherwise affirmed or notarized, is insufficient to raise an issue of fact that would prevent this Court from granting summary judgment to the movant. Even assuming the admissibility of these documentations, the mere allegation of a short stopping lead vehicle, without more, is insufficient as a matter of law to rebut the Plaintiff's *prima facie* showing that the Defendants' vehicle was the sole proximate cause of the accident. The short

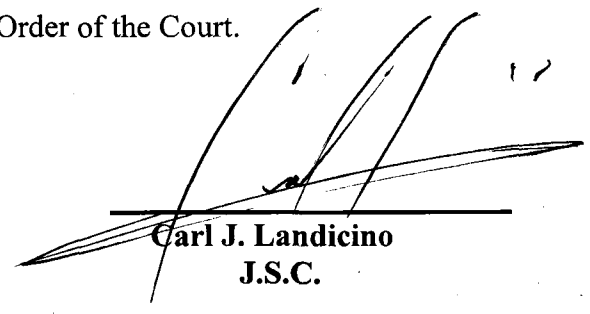
stop must be unexpected/unexplained to be a basis for non-negligent. *See Hakakian v. McCabe*, 38 A.D.3d 493, 494, 833 N.Y.S.2d 106, 107 [2nd Dept, 2007]; *see also Tumminello v. City of New York*, 148 A.D.3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2nd Dept, 2017].

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

Plaintiff's motion (motion sequence #1) is granted. The Plaintiff is awarded summary judgment on the issue of liability as to the Defendants 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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