

<b>Perlova v Keyspan Corp.</b>
2019 NY Slip Op 33456(U)
November 14, 2019
Supreme Court, Kings County
Docket Number: 525064/2018
Judge: Lara J. Genovesi
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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 14<sup>th</sup> day of November 2019.

P R E S E N T:

HON. LARA J. GENOVESI,  
J.S.C.

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BERTA PERLOVA,

Index No.: 525064/2018

Plaintiff,

AMENDED<sup>1</sup>  
DECISION & ORDER

-against-

KEYSPAN CORP, d/b/a NATIONAL GRID,  
KEYSPAN ENERGY CORP., KEYSPAN GAS  
EAST CORP., NATIONAL GRID USA,  
NATIONAL GRID USA SERVICE COMPANY,  
INC. and LEROY D. ABRAMS,

Defendants.

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

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	13-23
Opposing Affidavits (Affirmations) _____	25-29
Reply Affidavits (Affirmations) _____	30-33

***Introduction***

Plaintiff, Berta Perlova, moves herein, by notice of motion, sequence number one, to (1) amend the caption to reflect the dismissal and addition of certain parties and (2)

<sup>1</sup> The amendment relates to the correction of typographical errors.

pursuant to CPLR § 3212 for summary judgment on the issue of liability. The defendants, Keyspan Corp, d/b/a National Grid, Keyspan Energy Corp., Keyspan Gas East Corp., National Grid USA, National Grid USA Service Company, Inc. (National Grid) and Leroy D. Abrams, oppose the portion of the motion as to summary judgment on the issue of liability. Plaintiff's motion to amend the caption is unopposed.<sup>2</sup>

### *Background*

On December 10, 2018, plaintiff was struck by defendant's vehicle while she crossed 21<sup>st</sup> Avenue, Brooklyn, New York. Defendant's vehicle turned left from Benson Avenue onto 21<sup>st</sup> Avenue. Plaintiff was walking in the marked crosswalk when she was struck by defendant's vehicle. Defendant, Leroy D. Abrams, was driving a National Grid vehicle in the course of his duties as an employee of defendant, National Grid. 21<sup>st</sup> Avenue is a two-way street with one lane of traffic in each direction and Benson Avenue is a two-way street with two lanes of traffic in each direction.

Plaintiff provided an affidavit dated April 2, 2019, where she stated that she was struck by defendant's vehicle mid-day and it was clear out. When she approached Benson Avenue, she had the pedestrian walk signal. She looked to her left and right to confirm that there were no vehicle approaching before she crossed. Plaintiff walked more than half way across the street in the cross walk. Plaintiff stated that

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<sup>2</sup> Pursuant to a stipulation of discontinuance dated March 12, 2019, the defendants Keyspan Corp, d/b/a National Grid, Keyspan Energy Corp., Keyspan Gas East Corp., National Grid USA, National Grid USA Service Company, Inc. were dismissed from the action. Concurrently, the same stipulation added The Brooklyn Union Gas Company d/b/a National Grid N.Y. as to clarify the correct entity.

8. After I had completely crossed the west bound portion of the Benson Avenue and was past the double yellow lines in the east bound side, still in the crosswalk and with the steady walk signal, I was struck on my right side by a 2015 GMC Van with New York State registration number 47405MG which was owned by Defendant Keyspan and was being operated by Defendant LEROY D. ABRAMS . . . .

10. At the time of the impact occurred, I was completely within the painted crosswalk and had a steady walk signal the entire time from when I first step off the curb until when I was struck.

(NYSCEF #19, Plaintiff's Notice of Motion, Exhibit D).

### *Discussion*

#### *Summary Judgment*

“[T]he proponent of a summary judgment motion 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” (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; *see also Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]). 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 (*see Fairlane Fin. Corp. v. Longspaugh*, 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra*; *see also Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

“[A] plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries” (*Poon v. Nisanov*, 162 A.D.3d 804, 79 N.Y.S.3d 227 [2 Dept., 2018], citing *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 [2018]). Plaintiff demonstrated that she was walking in the crosswalk on Benson Avenue, with the crosswalk signal in her favor when the defendant failed to yield the right-of way. Plaintiff was struck by defendant when she was more than half way across the street as defendant made a left turn onto Benson Avenue (*see NYSCEF Doc. #19, Exhibit D - Plaintiff's Affidavit of Merit p 1, ¶4*). Plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability (*see Rodriguez v. City of New York*, 31 N.Y.3d 312, 101 N.E.3d 366 [2018]; *see also Lazarre v. Gragston*, 164 A.D.3d 574, 81 N.Y.S.3d 541 [2 Dept., 2018]).

In opposition, defendant failed to raise a triable issue of fact. Although defendant's counsel argues that plaintiff's motion is premature and deprives the defendants of the adequate means to defend against the claim, “. . . the defendant failed to offer an evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and

control of the plaintiff (*see* CPLR 3212[f]; *Lazarre v. Gragston*, 164 A.D.3d at 575, 81 N.Y.S.3d 541; *Niyazov v. Hunter EMS, Inc.*, 154 A.D.3d 954, 955, 63 N.Y.S.3d 457; *Kimyagarov v. Nixon Taxi Corp.*, 45 A.D.3d 736, 737, 846 N.Y.S.2d 309).” (*Gaston v Vertsberger*, -AD3d-, 2019 NY Slip Op 07384 [2 Dept, 2019]). Simply put, the defendant did not provide an affidavit by Leroy Abrams.

Defendants suggest that deposition testimony of plaintiff will bear evidence that is relevant to this motion but fails to provide any evidentiary showing to support that assertion. “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the plaintiff’s motion” (*see id.*; *see also Lazarre v. Gragston*, 164 A.D.3d at 575, 81 N.Y.S.3d 541; *Niyazov v. Hunter EMS, Inc.*, 154 A.D.3d at 955, 63 N.Y.S.3d 457; *Kimyagarov v. Nixon Taxi Corp.*, 45 A.D.3d at 737, 846 N.Y.S.2d 309). Furthermore, defendants “failed to submit an affidavit from a person with personal knowledge of the facts so as to raise a triable issue of fact as to whether there was a non-negligent explanation for the happening of this rear-end collision, or whether any culpable conduct by the plaintiff contributed to the happening of the subject accident” (*Niyazov v Hunter EMS, Inc.*, 154 A.D.3d 954, 63 N.Y.S.3d 457 [2 Dept., 2017] [internal citations omitted]).

### ***Conclusion***

Accordingly, it is hereby

ORDERED and ADJUDGED that plaintiffs’ motion for summary judgment on liability is granted; and it is further

ORDERED and ADJUDGED that plaintiff's motion to amending the caption is granted without opposition; and it is further

ORDERED and ADJUDGED that the caption is amended as follows:

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BERTA PERLOVA,

Index No.: 525064/2018

Plaintiffs,

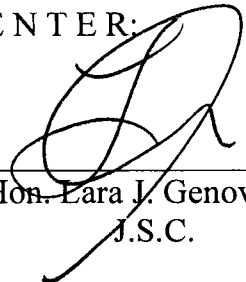
-against-

THE BROOKLYN UNION GAS COMPANY d/b/a  
NATIONAL GRID NY, INC. and LEROY. D ABRAMS

Defendants.  
-----X

The foregoing constitutes the decision and order of this Court.

ENTER:

  
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Hon. Lara J. Genovesi  
J.S.C.

Lara J. Genovesi  
J.S.C.

To:

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KINGS COUNTY CLERK  
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