

Horoshko v Bezmenova
2019 NY Slip Op 34882(U)
April 29, 2019
Supreme Court, Kings County
Docket Number: Index No. 514143/2018
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 29th day of April, 2019.

P R E S E N T:

HON. CARL J. LANDICINO, JSC

-----X
PETER HOROSHKO,

Index No.: 514143/2018

Plaintiff,

- against -

DECISION AND ORDER

TATYANA BEZMENOVA,

MOTION SEQ: #1

Defendant(s).

-----X

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

Papers Numbered

Notice of Motion/Cross Motion and

Affidavits (Affirmations) Annexed..... 1/2

Opposing Affidavits (Affirmations)..... 3

Reply Affidavits (Affirmations).....

After a review of the papers and oral argument the Court finds as follows:

Plaintiff Peter Horoshko ("Plaintiff"), moves for partial summary judgment on the issue of liability. Plaintiff contends that on January 29, 2018, while driving his vehicle, he collided with a vehicle owned and operated by Defendant, Tatyana Bezmenova ("Defendant"). Plaintiff further contends that the collision occurred in the left/right lane of the east bound side of the

Southern State Parkway at or near its intersection with the Meadowbrook Parkway, in Nassau County, New York¹.

In support of his motion, the Plaintiff alleges that at the time of the accident he was travelling on the Parkway. He states that he was hit in the rear by the front of Defendant's vehicle. Plaintiff further contends that the accident occurred approximately 12:15 P.M., he was wearing his seatbelt, the weather was clear, the road was dry and his rear lights were functioning properly. Plaintiff maintains that he was not in any way liable for the collision, that the Defendant was negligent and the sole proximate cause of the accident and that he could not have avoided the collision. (See Plaintiff Affidavit, Exhibit C of Plaintiff's Motion)

Defendant opposes the motion. Defendant by her affidavit (Defendant's Motion, Exhibit A) contends that she was travelling in the right lane on the Southern State Parkway near the Meadowbrook Parkway. Defendant further contends that Plaintiff was in the right lane, "several car lengths" ahead of her. Defendant also states that another vehicle was "tailgating" her and "[a]lthough I wanted to move into the center lane to avoid being rear ended I was unable to do so due[sic] to the continuous volume of traffic." Defendant then states that she observed a third vehicle suddenly move in front of the Plaintiff's vehicle from the grassy shoulder and as a result Plaintiff "broke abruptly." Defendant avers that she was unable to change lanes due to traffic and instead she turned her wheel to the right "...in an effort to avoid the collision, but was unable to do so", during what Defendant characterizes as an emergency situation.

Defendant states that she did not want to stop short because of the vehicle traveling too closely behind her and the front driver's side of her vehicle contacted the passenger side rear of

¹ Plaintiff's affidavit at Paragraph 2 says he was travelling in the left lane and Paragraph 4 states that he was travelling in the right lane. As indicated herein the collision apparently occurred in the right lane. The Defendant states that the collision occurred in the right lane.

the Plaintiff's vehicle. Defendant concludes by contending that she was not negligent and that the proximate cause of the accident was Plaintiff's abrupt braking.

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].

Defendant acknowledges hitting Plaintiff's car in the rear. She also acknowledges that there was a significant volume of traffic at the time of the collision. "Even if, as [the defendant driver] testified, the other vehicle came to a sudden stop at the subject intersection's yellow traffic light, [the defendant driver] should have anticipated that the other vehicle might come to a stop at the intersection." *Tumminello v. City of New York*, 148 A.D.3d 1084, 1085, 49 N.Y.S.3d

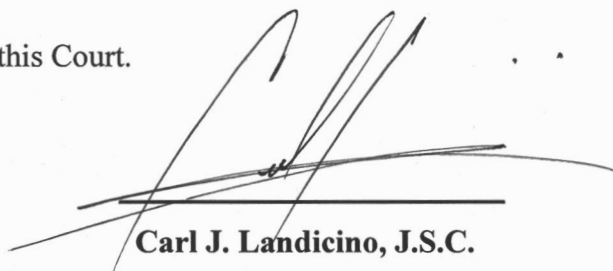
739, 741 [2nd Dept, 2017]. Even accepting Defendant's version as true, the volume of traffic together with her observation of the vehicle moving in front of Plaintiff's vehicle did not result in an unexplained stop. Further, the traffic volume, including her being tailgated, should have resulted in the Defendant reducing her speed and anticipating the stop. Finally, there is no indication that Plaintiff collided with the vehicle that allegedly pulled in front of his vehicle. Accordingly, Plaintiff's motion is granted.

It is hereby ORDERED as follows:

Plaintiff's motion (Motion Seq. #1) is granted and the case is to proceed on the issue of damages only.

This constitutes the Decision and Order of this Court.

ENTER:



Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
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