

Ramkissoon v Basquiat

2019 NY Slip Op 34931(U)

July 30, 2019

Supreme Court, Kings County

Docket Number: Index No. 507287/2017

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 30th day of July, 2019.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

-----X

SUNITA RAMKISSOON,

Plaintiff,

Index No.: 507287/2017

- against -

DECISION AND ORDER

LUCIENT BASQUIAT, JR, MARIE BASQUIAT,
ICE ATLANTIC RENTALS, INC., and MARIO
GUISTIZIA,

Defendants.

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 July 20, 2015. On that day, the Plaintiff Sunita Ramkissoon (hereinafter the "Plaintiff") was allegedly rear ended by a motor vehicle owned by Defendant Marie Basquiat and operated by Defendant Lucient Basquiat, Jr. (hereinafter "the Basquiat Defendants"). The Plaintiff alleges that at the time of the incident, her vehicle was stopped at a red traffic signal on Pitkin Avenue, near its intersection with Jerome Street, in Brooklyn New York. The Plaintiff now moves for summary judgment (Motion Sequence #2) on the issue of liability. In opposition, the Basquiat Defendants contend that the motion should be denied as it is procedurally defective in that it does not include a full set of pleadings including those of an action previously joined for trial by order dated April 25, 2018 (Basquiat Jr. v. Guisitizia, Ice Atlantic Rentals (520231/2017)). Additionally, the Basquiat Defendants contend that

the transcripts from Defendant Luciant Basquiat Jr.'s deposition have not been conducted and as a consequence opposition cannot be maintained. Defendant Ice Atlantic Rentals, Inc. and Defendant Mario Guistizia have not filed any papers in response and/or relation to this motion.

As an initial matter, the Court rejects the Basquiat Defendants contention that the instant motion is defective given that the motion papers fail to provide the pleadings for the joined matter (Basquiat Jr. v. Guisitizia, Ice Atlantic Rentals (520231/2017). CPLR 3212(b) provides in pertinent part that "a motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. *See also Fiber Consultants, Inc. v. Fiber Optek Interconnect Corp.*, 84 A.D.3d 1153, 1154, 924 N.Y.S.2d 276, 277 [2nd Dept, 2011]; *Wider v. Heller*, 24 A.D.3d 433, 434, 805 N.Y.S.2d 130, 130 (2005) The instant motion provides a complete set of the pleadings for the instant proceeding. What is more, the two proceedings were not consolidated, but merely joined for trial only. A review of the Order shows that each proceeding "will retain its own index number, file a separate RJI, separate notes of issue, and file separate judgments..." As a result, the Court finds that it is not necessary, pursuant to CPLR 3212(b), to include the pleadings for the joined proceeding. *See generally, Hope v. Fortunato*, 20 Misc. 3d 1117(A), 867 N.Y.S.2d 17 [Sup. Ct. Kings Cnty, 2008].

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]. Additionally, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant's negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 A.D.3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2nd Dept, 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented to establish, *prima facie*, that the Plaintiff is entitled to summary judgment on the issue of liability. In support of its application, the Plaintiff relies on an affidavit of the Plaintiff and a Police Accident Report. The Plaintiff by affidavit states “I was struck in the rear, while at a red light, by another vehicle that was operated by Defendant , LUCIENT BASQUIAT JR, whose vehicle was immediately behind me in the same lane of travel at Pitkin Avenue Eastbound.” 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 affidavit 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].

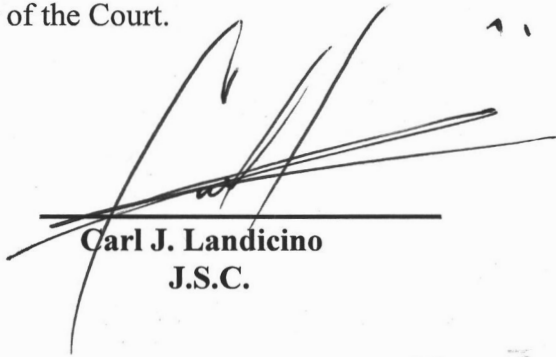
In opposition to the motion, the Defendant has provided nothing to raise a material issue of fact that would prevent this Court from granting the motion. *See Hakakian v. McCabe*, 38 A.D.3d 493, 494, 833 N.Y.S.2d 106, 107 [2nd Dept, 2007]; *see also Tumminello v. City of New York*, 148 A.D.3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2nd Dept, 2017]. Accordingly, the Plaintiff's motion is granted.

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 as to the Basquiat Defendants.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino
J.S.C.

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