

Koryankye v Williams

2019 NY Slip Op 34945(U)

October 18, 2019

Supreme Court, Kings County

Docket Number: Index No. 503614/2018

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 18th day of October, 2019.

PRESENT:
HON. CARL J. LANDICINO, Justice.

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JAMES KORANKYE,
Plaintiff,

Index No.: 503614/2018

- against -

DECISION AND ORDER

DEANNA GABRIELLE WILLIAMS and
ELDEN WILLIAMS,
Defendant(s).

Motion Sequence #1

-----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).....	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 October 24, 2016. On that day, the Plaintiff, James Korankye (hereinafter the "Plaintiff") owner and operator of his vehicle, was involved in a collision with a vehicle owned by Defendant Elden Williams ("Defendant Owner") and operated by Defendant Deanna Gabriella Williams (hereinafter the "Defendant Driver") (collectively the "Defendants"). The Plaintiff alleges that at the time of the incident, he was traveling with the right of way, at a reasonable speed, on 47th Avenue, in the vicinity of its intersection with 27th Street in Queens, New York. The Plaintiff contends that the Defendant Driver entered the intersection, allegedly striking the Plaintiff's vehicle after the Defendant Driver allegedly failed to stop at a stop sign. The Plaintiff now moves for summary judgment (Motion Sequence #1) on the issue of liability and further moves to dismiss the Defendants' first affirmative

defense alleging culpable conduct attributable to the Plaintiff. In opposition, the Defendants contend that the motion should be denied as premature in that no examinations before trial have taken place and further that the Plaintiff has failed to meet his *prima facie* burden for summary judgment.

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].

Generally, in relation to summary judgment motions, “where facts essential to justify opposition to a motion for summary judgment are exclusively within the knowledge and control of the movant, summary judgment may be denied.... This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion.” *Juseinoski*

v. New York Hosp. Med. Ctr. of Queens, 29 A.D.3d 636, 637, 815 N.Y.S.2d 183, 184-85 [2nd Dept, 2006], citing *Baron v. Incorporated Vil. of Freeport*, 143 A.D.2d 792, 792-793, 533 N.Y.S.2d 143 [2nd Dept, 1988]. However, this is generally only applicable if further discovery would lead to information not in the possession of the opponent of the motion. See *Cajas-Romero v. Ward*, 106 A.D.3d 850, 852, 965 N.Y.S.2d 559, 561 [2nd Dept, 2013]; *Boorstein v. 1261 48th St. Condo.*, 96 A.D.3d 703, 704, 946 N.Y.S.2d 200, 202 [2nd Dept, 2012]. Defendants have failed to show that further discovery would lead to information not in their possession. See, *Harrinarain v. Sisters of St. Joseph*, 173 A.D.3d 983, 104 N.Y.S.3d 661 (2d Dept. 2019) The affirmation in support was by the attorney who lacks personal knowledge, and is conclusory in nature. See, *Kucera v. Waldbaums Supermarkets*, 304 A.D.2d 531, 758 N.Y.S.2d 133 (2d Dept. 2003); *Sigelakis v. Washington Group, LLC*, 46 A.D.3d 800, 848 N.Y.S.2d 272 (2d Dept. 2007).

It is true that “[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]. The Plaintiff established through his own affidavit (Exhibit “D”) that the Defendant negligently proceeded “into the intersection on a street controlled by a stop sign without yielding the right-of-way to the plaintiff’s vehicle.” *Mastricova v. Ruderman*, 164 A.D.3d 1435, 82 N.Y.S.3d 546 (2d Dept. 2018). See, *Tsyganash v. Auto Mall Fleet Management, Inc.*, 163 A.D.3d 1033, 83 N.Y.S.3d 74 (2d Dept. 2018); *Corwin v. Heart Share Human Servs. Of N.Y.*, 66 A.D.3d 814, 887 N.Y.S.2d 246 (2d Dept. 2009).

Defendants have failed to raise a material issue of fact. As such Plaintiff has established that Defendants were the sole proximate cause of the accident. As a matter of law, “a driver who

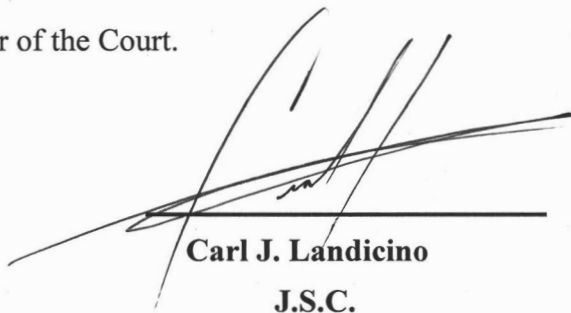
fails to yield the right-of-way after stopping at a stop sign controlling traffic is in violation of Vehicle and Traffic Law §1142(a) and is negligent as a matter of law.” *Mohammad v. Ning*, 72 A.D.3d 913, 899 N.Y.S.2d 356 (2d Dept. 2010). See, *Mastricova v. Ruderman*, 164 A.D.3d 1435, 82 N.Y.S.3d 546 (2d Dept. 2018); *Harrinarain v. Sisters of St. Joseph*, 173 A.D.3d 983, 104 N.Y.S.3d 661 (2d Dept. 2019).

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

Plaintiff’s Motion (motion sequence #1) for summary judgment on the issue of liability is granted and the matter shall proceed on the issue of damages. The Defendants’ first affirmative defense of comparative negligence is dismissed.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino
J.S.C.

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KINGS COUNTY CLERK
FILED
