

**Koziol v City of New York**

2020 NY Slip Op 32224(U)

July 6, 2020

Supreme Court, New York County

Docket Number: 451857/2019

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62**

*Justice*

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**INDEX NO. 451857/2019**

JACEK KOZIOL,

**MOTION DATE 3/26/2020**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

THE CITY OF NEW YORK, NYC DEPARTMENT OF  
SANITATION, MICHAEL NICHOLS, JOSEPH KNIGHTS,  
KAB TRUCKING

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff’s motion for partial summary judgment on the issue of liability and Joseph E. Knights and KAB Trucking’s cross-motion for summary judgment on the issue of liability are decided as follows:

Plaintiff commenced this action by the filing of a summons and complaint on April 8, 2019. Issue was joined by the service of The City of New York and the New York City Department of Sanitation’s answer on May 8, 2019 and the service of Joseph Knights and KAB Trucking’s answer on July 1, 2019. On September 20, 2019, venue was transferred to New York County. Plaintiff and defendants Joseph Knights and KAB Trucking now move for summary judgment on the issue of liability.

In support of plaintiff’s motion, plaintiff submits an affidavit and 50-h hearing transcript which establish as follows: On December 18, 2018, at approximately 8:30 A.M., plaintiff was traveling Westbound on East 57<sup>th</sup> street near its intersection with 3rd Avenue in New York County. While stopped at a red light, plaintiff’s vehicle was struck in the rear by an Isuzu garbage truck

bearing license plate number KQFP28 driven by defendant, Joseph E. Knight and owned by defendant, KAB Trucking, which was behind plaintiff's vehicle in traffic.

In support of the cross-motion, defendants, Joseph E. Knight and KAB Trucking submit the affidavits of plaintiff and Joseph Knights, which establish as follows: Prior to the accident, the Knights vehicle had come to a complete stop approximately one car length behind plaintiff's vehicle. While stopped, the Knights vehicle was struck in the rear by a New York City Department of Sanitation Garbage truck, bearing license plate number AU793 and driven by Michael A. Nichols.

Summary judgment is a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue. (*Andre v. Pomeroy*, 32 NY2d 361 [1974]; *Kwong On Bank, Ltd. v. Montrose Knitwear Corp.*, 74 AD2d 768 [2d Dept 1980]; *Crowley Milk Co. v. Klein*, 24 AD2d 920 [3d Dept 1965]). Even the color of a triable issue forecloses the remedy (*Newin Corp. v. Hartford Acc & Indem. Co.*, 62 NY2d 916 [1984]). The evidence will be construed in a light most favorable to the one moved against. (*Bennicasa v. Garrubo*, 141 AD2d 636 [2d Dept 1988]; *Weiss v. Gaifield*, 21 AD2d 156 [3d Dept 1964]). The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact (see, *Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

It is well established that when a driver approaches another vehicle from the rear, that driver is under a duty to maintain a safe distance between the cars (see Vehicle and Traffic Law §1129[a]), maintain a reasonably safe rate of speed, maintain control of the vehicle, and use

reasonable care to avoid colliding with the other vehicle (See *Shamah v Richmond County Ambulance Serv.*, 279 AD2d 564; *Benyarko v Avis Rent A Car Sys.*, 162 AD2d 572; *Young v City of New York*, 113 AD2d 833.) Therefore, a rear-end collision establishes a prima facie case of negligence on the part of the operator of the rear vehicle and imposes a duty on the operator of the rear vehicle to explain how the accident occurred. (See, *Leal v Wolff*, 224 AD2d 392; *Gambino v City of New York*, 205 AD2d 583). Additionally, pursuant to Vehicle and Traffic Law §1162, “No person shall move a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety,” a violation of which constitutes negligence as a matter of law, See, *Smalls v. Adams*, 118 AD3d 693 (2d Dept 2014). As such, plaintiff has established a prima facie entitlement to summary judgment on the issue of liability as against all vehicle behind plaintiff and defendants KAB Trucking and Joseph Knights have rebutted plaintiff’s prima facie showing as it relates to any liability by said defendants and established a prima facie entitlement to summary judgment on the issue of liability as it relates to the New York City defendants.

In opposition, defendants, The City of New York, the NYC Department of Sanitation and Michael Nichols argue that the summary judgment motions are premature as discovery is incomplete, however, said defendants 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 plaintiffs’ knowledge and control (see CPLR 3212[f]; *Espada v. City of New York*, 74 A.D.3d 1276, 1277 (2d. Dept. 2010)). Specifically, defendants fail to submit an affidavit of their driver raising any of the above issues.

Plaintiff’s motion and defendants, KAB Trucking and Joseph Knights’ cross-motion are hereby granted. Plaintiff is granted summary judgment on the issue of liability as against defendants, The City of New York, the NYC Department of Sanitation and Michael Nichols and

any affirmative defenses alleging comparative negligence by the plaintiff are dismissed. Defendants, KAB Trucking and Joseph Knights are granted summary judgment on liability and this action and any cross-claims are dismissed as against them. The sole issue remaining for trial is that of damages. This constitutes the decision and order of the Court.

7/6/2020  
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE