

**Khavko v Ramirez**

2020 NY Slip Op 33451(U)

October 13, 2020

Supreme Court, Kings County

Docket Number: 506816/2018

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 13<sup>th</sup> day of October 2020.

PRESENT:

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

-----X

GALINA KHAVKO,

Index No.: 506816/2018

Plaintiff,

DECISION & ORDER

-against-

JOSE RAMIREZ, JULISSA TRANS INC., PARVIZ  
MUKHAMADKULOV and RUSTAM BURIEV,

Defendants.

-----X

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 _____	73-78
Opposing Affidavits (Affirmations) _____	80-81, 86
Reply Affidavits (Affirmations) _____	82

***Introduction***

Defendants Parviz Mukhamadkulov and Rustam Buriev, move by notice of motion, sequence number five, pursuant to CPLR § 3212, for summary judgment on the

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issue of liability and for such other relief as the Court deems proper. Plaintiff and defendants, Jose Ramirez, and Julissa Trans Inc., oppose this motion.

### ***Background***

This action involves a three car rear-end collision that occurred on April 5, 2015, on 18<sup>th</sup> Avenue, at the intersection of 60<sup>th</sup> Street in Brooklyn, New York. Plaintiff, Galina Khavko (Khavko) was driving vehicle one. Khavko testified at an examination before on October 9, 2019 (*see* NYSCEF Doc. No. 78, Exhibit D, Khavko EBT). Khavko was the stopped at a red traffic light on 18<sup>th</sup> Avenue for two to three minutes (*see id.* at 19). While stopped, plaintiff's vehicle was struck in the rear. There was one impact (*see id.* at 21). Plaintiff did not see either of the other vehicles involved in the accident prior to impact (*see id.* at 20). Khavko does not recall telling the police how the accident occurred (*see id.* at 31). Plaintiff left the scene by ambulance.

The second vehicle in this three-car collision, vehicle two, was owned by defendant Rustam Buriev and operated by defendant Parviz Mukhamadkulov (Mukhamadkulov). Mukhamadkulov testified at an examination before on January 17, 2020 (*see* NYSCEF Doc. No. 77, Exhibit C, Mukhamadkulov EBT). He was also stopped at the red traffic light on 18<sup>th</sup> Avenue. His vehicle was directly behind Khavko's vehicle, vehicle one (*see id.* at 54). Mukhamadkulov was stopped for 10 to 15 seconds before his vehicle was rear-ended (*see id.* at 29, 30, 32). When he was struck in the rear, his vehicle skidded into the vehicle in front of him (*see id.* at 35).

The third vehicle in this chain collision, vehicle three, was owned by defendant Julissa Trans Inc., and operated by Jose Ramirez. Defendants Jose Ramirez and Julissa

Trans Inc., “are precluded from offering any testimony at trial, providing any affidavit any support of claims for liability defense” (*see* NYSCEF Doc. No. 83, February 24, 2020, Order of the Hon. Lizette Colon). In opposition to this motion, counsel proffers the police accident report stating that vehicle one states that vehicle two stopped short “causing the collision making vehicle two collide with vehicle three” (NYSCEF Doc. No. 81, Exhibit A, Police Accident Report).

This action was commenced by the filing of the summons and complaint on April 4, 2018 (*see* NYSCEF Doc. No. 1). Issue was joined on April 26, 2018 by defendants Jose Ramirez and Julissa Trans Inc (*see* NYSCEF Doc. No. 2) and on May 18, 2018 by defendants Rustam Buriev and Parviz Mukhamadkulov (*see* NYSCEF Doc. No. 4). A preliminary conference was held on August 16, 2018 (*see* NYSCEF Doc. No. 9) and a compliance conference was held on January 18, 2019 (*see* NYSCEF Doc. No. 25). The note of issue was filed on January 31, 2020 (*see* NYSCEF Doc. No. 40).

### *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 the 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 rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Xin Fang Xia v. Saft*, 177 A.D.3d 823, 113 N.Y.S.3d 249 [2 Dept., 2019]; *see also Ordonez v. Lee*, 177 A.D.3d 756, 110 N.Y.S.3d 339 [2 Dept., 2019]).

In the case at bar, vehicle two, owned by defendant Rustam Buriev and operated by defendant Parviz Mukhamadkulov established their prima facie entitlement to judgment as a matter of law through the submission of Mukhamadkulov and Khavko’s deposition testimony. Mukhamadkulov demonstrated that he was not negligent in the happening of the accident. While his vehicle was stopped for 10 to 15 seconds on 18<sup>th</sup> Avenue at a red traffic light, defendant Ramirez struck Mukhamadkulov in the rear causing Mukhamadkulov’s vehicle to skid into Khavko’s stopped vehicle (*see generally Poon v. Nisanov*, 162 A.D.3d 804, 79 N.Y.S.3d 227 [2 Dept., 2018]; *see also Ortiz v Welna*, 152 A.D.3d 709, 58 N.Y.S.3d 556 [2 Dept., 2017]).

In opposition, defendants Jose Ramirez and Julissa Trans Inc failed to rebut defendants Rustam Buriev and Parviz Mukhamadkulov's prima facie showing. As an initial matter, they were unable to include an affidavit from the driver because they were precluded. They contend that a question of fact exists based on statements contained in the police accident report. The police accident report is not certified and is the only evidence submitted in opposition to this motion for summary judgment. "Although hearsay evidence may be considered in opposition to a motion for summary judgment, it is insufficient to bar summary judgment if it is the only evidence submitted" (*Stock v. Otis El. Co.*, 52 A.D.3d 816, 861 N.Y.S.2d 722 [2 Dept., 2008], citing *Rodriguez v. Sixth President*, 4 A.D.3d 406, 771 N.Y.S.2d 368 [2 Dept., 2004]; see also *Yassin v. Blackman*, -- A.D.3d --, 2020 NY Slip Op 05090 [2 Dept., 2020], citing *Stock v. Otis El. Co.*, 52 A.D.3d 816, *supra* ["To the extent that hearsay may be received in opposition to a motion for summary judgment if it is not the only evidence submitted, we make no holding as to whether an uncertified police accident report may be considered by a court in such instance"]).

Plaintiff, in opposition, argues that it is undisputed that the operator of vehicle 2 was driving with a suspended license, and therefore, that operator is negligent per se; the owner of vehicle 2 negligently entrusted the vehicle to that operator. However, "the fact that the operator was unlicensed fails to demonstrate that he was negligent, as the absence or possession of a driver's license relates only to the authority for operating a vehicle, and not to its manner of operation" (*Almonte v. Marsha Operating Corp.*, 265 A.D.2d 357, 696 N.Y.S.2d 484 [2 Dept., 1999], citing *Hanley v. Albano*, 20 A.D.2d 644, 246

N.Y.S.2d 380 [2 Dept., 1964]; *see also Dalal v. City of New York*, 262 A.D.2d 596, 692 N.Y.S.2d 468 [2 Dept., 1999]; *Firmes v. Chase Manhattan Auto. Fin. Corp.*, 50 A.D.3d 18, 852 N.Y.S.2d 148 [2 Dept., 2008]).

**Conclusion**

Accordingly, defendants Parviz Mukhamadkulov and Rustam Buriev’s motion for summary judgment as to liability is granted. This constitutes the decision and order of this Court.

ENTER:



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

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