

Krokh v Page Taxi Corp.
2020 NY Slip Op 33488(U)
October 5, 2020
Supreme Court, Kings County
Docket Number: 528142/19
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5th day of October, 2020

P R E S E N T:

HON. WAVNY TOUSSAINT,

Justice.

----- -X

VOLODYMYR KROKH,

Plaintiff,

- against -

PAGE TAXI CORP. and FRANCIS K. ASARE,

Defendants.

----- -X

The following e-filed papers herein:

Index No. 528142/19

MS # 1

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

5-6, 10

Opposing Affidavits (Affirmations) _____

15

Reply Affidavits (Affirmations) _____

16

_____ Affidavit (Affirmation) _____

Other Papers _____

Upon the foregoing papers, plaintiff Volodymyr Krokx moves for an order, pursuant to CPLR 3212, granting plaintiff summary judgment on the issue of liability. Defendants oppose the motion.

BACKGROUND

Plaintiff commenced this action to recover damages for personal injuries sustained in a motor vehicle accident on October 5, 2018 when a vehicle, owned by defendant Page Taxi

Corp. and operated by defendant Francis K. Asare (hereinafter “defendant vehicle”), collided with the rear of a vehicle in which plaintiff was a passenger (hereinafter “plaintiff vehicle”). According to the police accident report, Asare stated that he was traveling behind the plaintiff vehicle “when all of a sudden traffic came to a stop,” and “[Asare] tried to [stop] but rear ended [the plaintiff vehicle].”

In support of his motion for summary judgment, plaintiff submits the police accident report which is uncertified, and an affidavit wherein he avers that the front of the vehicle operated by Asare collided with the rear of the plaintiff vehicle while the plaintiff vehicle was at a complete stop. Plaintiff states that at the moment of the collision, the plaintiff vehicle was at a complete stop for at least five seconds due to traffic conditions ahead. Plaintiff further states that at the scene of the collision, Asare admitted his fault to both the police and the passengers in the plaintiff vehicle.

Plaintiff’s affidavit, in English, is accompanied by an “affirmation of translator” executed by attorney Alexis Ravitch, who states that she is “proficient and fluent in both the English language and the Russian language” and a “qualified translator and competent to act as an interpreter and translator from English to Russian and from Russian to English.” Ravitch states that, as part of her professional responsibilities, she “regularly translate[s] for clients from English to Russian and from Russian to English.” Ravitch avers that she translated the accompanying affidavit of plaintiff from English to Russian, “word for word,” and confirmed with plaintiff that he understood his translation and that the contents of the

affidavit were true and accurate. Ravitch avers that the translation provided to plaintiff was true and accurate and a complete word by word rendering of the content of the original English language document and that plaintiff understood the complete translation.

In an attorney affirmation in opposition, defense counsel argues that the uncertified police report is inadmissible and, if plaintiff does not speak English as stated in the affidavit of translation, it is unclear how he could have heard defendant Asare admit fault in English.

DISCUSSION

“A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle” (*Nsiah-Ababio v Hunter*, 78 AD3d 672 [2d Dept 2010]; see Vehicle and Traffic Law § 1129 [a]; *Niyazov v Hunter EMS, Inc.*, 154 AD3d 954 [2d Dept 2017]). “[A] rear-end collision 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 non-negligent explanation for the collision” (*Scheker v Brown*, 85 AD3d 1007 [2d Dept 2011]; see *Witonsky v New York City Tr. Auth.*, 145 AD3d 938, 939 [2d Dept 2016]; *Gleason v Villegas*, 81 AD3d 889, 890 [2d Dept 2011]). “[V]ehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her car and the car ahead” (*Volpe v Limoncelli*, 74 AD3d 795, 795-796 [2d Dept 2010], quoting *Shamah v Richmond County Ambulance Serv.*, 279 AD2d

564, 565 [2d Dept 2001]; *see Staton v Ilic*, 69 AD3d 606 [2d Dept 2010]; *Lampkin v Chan*, 68 AD3d 727 [2d Dept 2009]; *Hakakian v McCabe*, 38 AD3d 493 [2d Dept 2007]).

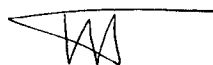
“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence” to eliminate any material issue of fact from the case (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008] [internal quotation marks and citation omitted]). The “[f]ailure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). CPLR 3212 (b) provides that a motion for summary judgment “shall be supported by affidavit,” “by a person having knowledge of the facts,” and by “other available proof, such as depositions and written admissions.”

When submitting an affidavit from a party who is not a fluent English speaker, the proper procedure is to draft an application in the language of the party, together with an English translation and an affidavit by a translator stating his or her qualifications, and that the translation is accurate (*see* Thomas F. Gleason, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C2101:2); *also see Testa v Testa*, 181 AD3d 413 [2nd Dept 2020]; *Taveras v Cayot Realty, Inc.*, 125 AD3d 754 [2d Dept 2015]). Here is is undisputed that plaintiff is not a fluent English speaker. As there is no affidavit submitted by plaintiff in Russian the language of plaintiff, which accompanies the English translation, the court finds that plaintiff’s submission does not constitute admissible evidence and is insufficient to

support his motion for summary judgment (*CPLR 2101[b]*; see *Jiang Yi Lan v Ketcham*, 48 Misc3d 1223[A]; 2015 NY Slip Op 51194[U] [Sup Ct, Queens County 2015]). Accordingly, plaintiff's motion for summary judgment on the issue of liability is denied, without prejudice to renew.

The foregoing constitutes the decision and order of the court.

E N T E R,



J. S. C.

KINGS COUNTY CLERK
FILED
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