

**Matthews v What's Next Taxi, Inc.**

2020 NY Slip Op 35425(U)

September 1, 2020

Supreme Court, Kings County

Docket Number: Index No. 508751/2018

Judge: Carl J. Landicino

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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 1<sup>st</sup> day of September, 2020.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X  
DARRYL MATTHEWS

*Plaintiff,*

Index No.: 508751/2018

DECISION AND ORDER

-against-

WHAT'S NEXT TAXI, INC. and DELOAR HOSAIN,  
*Defendants,*

Motions Sequence #1

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion and

Affidavits (Affirmations) Annexed ..... 19-24

Opposing Affidavit (Affirmations)..... 27-29

Reply Affidavits (Affirmations) ..... 32

After a review of the papers and oral argument the Court finds as follows:

This lawsuit arises out of a motor vehicle accident that allegedly occurred on February 5, 2008. Plaintiff Darryl Matthews (hereinafter "the Plaintiff") alleges in his Complaint that on that date he suffered personal injuries after the vehicle he was a passenger in was struck in the rear by a vehicle owned by Defendant What's Next Taxi, Inc. and operated by Defendant Deloar Hosain (hereinafter "the Defendants"). The Plaintiff further alleges in his complaint that the collision occurred while the vehicle he was a passenger in was at a complete stop on Adams Street, at or near its intersection with Tillary Street in Brooklyn, New York.

The Plaintiff moves (motions sequence #1) for an order pursuant to CPLR 3212 granting summary judgment on the issue of liability in favor of the Plaintiff, 1) finding that the vehicle he was a passenger in was free from comparative negligence, 2) striking the Defendants' third

affirmative defense of comparative negligence, and 3) proceeding to trial on the issue of damages. The Plaintiff contends that summary judgment should be granted in favor of the Plaintiff on the issue of liability given that the motor vehicle that the Plaintiff was a passenger in was rear ended while stopped. In opposition, the Defendant argues that the motion should be denied as there are triable issues of fact that should prevent this Court from granting summary judgment at this time.

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 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 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 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 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 [2d 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 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; see *Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. 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 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 NY3d 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 Defendant was the sole proximate cause of the accident. In support of its application, the Plaintiff relies on his affidavit. The Plaintiff stated that “[w]e were stopped for a red traffic light.” The Plaintiff also states in his affidavit that “[p]rior to impact we were fully stopped for maybe 30-60 seconds and we did not change lanes for at least ten [sic] (1) full minutes” and “[w]e were not moving whatsoever when we were struck without warning.” The affidavit of the Plaintiff is sufficient for the Plaintiff to establish a *prima facie* showing. *See Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d 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 AD3d 737, 737, 846 N.Y.S.2d 311, 311 [2d Dept 2007].

In opposition to the motion, the Defendant has failed to raise a material issue of fact that would prevent this Court from granting the Plaintiff’s motion. The Defendant provided a Police Report. Even assuming its admissibility, the Defendant driver is purported to have acknowledged hitting the Plaintiff’s vehicle in the rear, and raises in conclusory fashion that Plaintiff’s vehicle stopped short at the traffic light. The Defendant driver did not state what color the traffic signal was at the time of the accident. This is insufficient to rebut Plaintiff’s showing. Therefore, the Defendant Driver’s actions were the sole proximate cause of the accident. *See Hakakian v. McCabe*, 38 AD3d 493, 494, 833 N.Y.S.2d 106, 107 [2d Dept 2007]; see also *Tumminello v. City*

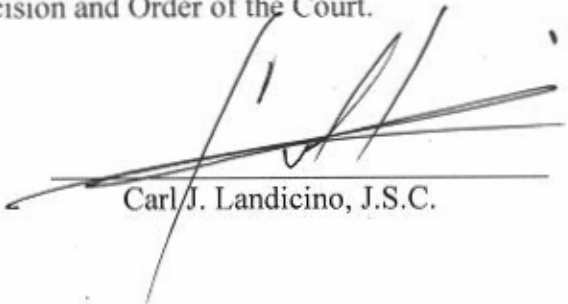
of New York, 148 AD3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2d Dept 2017] [a stop prior to reaching a yellow or red light should not be unexpected].

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

The Plaintiff's motion (motion sequence #1) is granted. The Defendants' vehicle was the sole proximate cause of the accident, the Defendants' third affirmative defense of comparative negligence is dismissed, and the matter will proceed to trial on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
Carl J. Landicino, J.S.C.

2020 SEP 17 AM 10:38

KINGS COUNTY CLERK  
FILED

