

Orona v Perfilov

2021 NY Slip Op 32211(U)

October 20, 2021

Supreme Court, Kings County

Docket Number: Index No. 512126/2020

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 20th day of October 2021.

PRESENT:

HON. CARL J. LANDICINO,
Justice.

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PETER ANGEL ORONA,

INDEX NO. 512126/2020

Plaintiff,

-against-

DECISION AND ORDER

NATALYA PERFILOV,

Motion Sequence #1

Defendant.

-----X

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

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed	4-9,
Opposing Affidavits (Affirmations).....	11,
Reply Affidavits (Affirmations)	12

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

The instant action concerns a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on March 29, 2019. Plaintiff, Peter Angel Orona, alleges he suffered personal injuries when his vehicle was allegedly struck in the rear by a vehicle owned and operated by Defendant Natalya Perfilov (hereinafter the "Defendant"). The incident allegedly occurred on Cropsey Avenue in Brooklyn, New York.

The Plaintiff now moves (motions sequence #1) for an order pursuant to CPLR 3212 granting her summary judgment on the issue of liability and dismissing defendant's affirmative defense of culpable

conduct. Specifically, the Plaintiffs contend that summary judgment should be granted given that there is *prima facie* evidence that the Plaintiffs' vehicle was stopped at a traffic signal at which time Defendants' vehicle hit the Plaintiffs' vehicle in the rear. The Defendant partially opposes the motion, and argues that the Plaintiff's motion should be denied as it relates to the Defendant's first affirmative defense (failure to wear a seatbelt) where no discovery has taken place.

Summary 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 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment 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. 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]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party." *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 A.D.3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

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]. However, “[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 N.Y.3d 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 by the Plaintiff to establish, *prima facie*, that the Defendant's vehicle hit the Plaintiff's vehicle in the rear while it was stopped at a red traffic signal. This evidence 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]. See also VTL 1129(a).

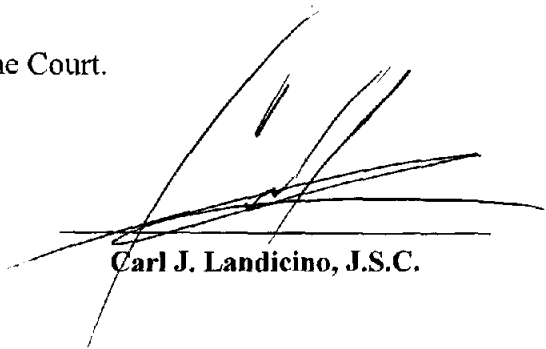
The Court also finds that the Plaintiff's application regarding striking the Defendant's affirmative defense of culpable conduct should also be granted. There were no facts that support the Defendants' affirmative defense alleging culpable conduct on the part of the Plaintiff based upon the admissible evidence proffered. See *Sapienza v. Harrison*, 191 AD3d 1028, 142 N.Y.S.3d 584, 588 [2d Dept 2021]; *Kwok King Ng v. West*, 195 AD3d 1006, 146 N.Y.S.3d 811, 812 [2d Dept 2021]. No party with knowledge alleges culpable conduct on the part of the Plaintiff. The movant did seek to have the Defendant's affirmative defense of culpable conduct dismissed. Accordingly, the Court finds that the Defendant was negligent and the sole proximate cause of the accident. See *Poon v. Nisanov*, 162 AD3d 804, 808, 79 N.Y.S.3d 227, 231 [2d Dept 2018]; see also *Diamond v. Comins*, 194 AD3d 784, 785 [2d Dept 2021].

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

Plaintiff's motion (motion sequence #1) for partial summary judgment on the issue of liability is granted as indicted herein, and the matter shall proceed on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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