

Rush v Revel Tr. Inc.
2021 NY Slip Op 32325(U)
October 28, 2021
Supreme Court, Kings County
Docket Number: Index No. 513797/2020
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 28th day of October 2021.

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PRESENT:

HON. CARL J. LANDICINO,
Justice.

-----X
KIMBERLEA RUSH,
Plaintiff,

Index No.: 513797/2020

-against-

DECISION AND ORDER

REVEL TRANSIT INC., JOSEPH MEHREL,
MARTIN MEHREL and LEVAR JOHNSON,

Motion Sequence #1

Defendants.
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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 13-19,

Opposing Affidavits (Affirmations)..... 22, 24,

Reply Affidavits (Affirmations) 23, 30

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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 an alleged motor vehicle collision that occurred on June 25, 2020. At the time of the occurrence, Plaintiff, Kimberlea Rush (hereinafter the "Plaintiff"), was a passenger on a motor scooter operated by Defendant Levar Johnson (hereinafter "Defendant Johnson") and owned by Defendant Revel Transit, Inc.,¹ which was involved in a collision with a motor vehicle owned by Defendant Martin Mehrel and operated by Defendant Joseph Mehrel (hereinafter the "Mehrel Defendants").

¹ As per a Stipulation of Discontinuance Without Prejudice dated February 17, 2021, any claims and cross-claims were dismissed, without prejudice, as against defendant Revel Transit Inc.

The Mehrel Defendants now move (motions sequence #1) for an order pursuant to CPLR 3212 granting them summary judgment and dismissing the Complaint and any cross-claims against them. The Mehrel Defendants contend that the facts show that they were not responsible for the subject collision. Specifically, the Mehrel Defendants contend that their vehicle was parked and that their vehicle was struck in the rear by the scooter. In opposition, the Plaintiff opposes the motion and contends that there are issues of fact as to whether the Mehrel Defendants were improperly double parked and but for this improper parking the collision would not have occurred.

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 AD3d 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].

Turning to the merits of the instant motion, the Court finds that there is a material issue of fact relating to whether Defendant driver Joseph Mehrel was negligent and a proximate cause of the accident. This prevents the Court from finding that Defendant Johnson was negligent and the sole proximate cause of the collision at issue. In support of their motion, the Mehrel Defendants rely on an affidavit from Defendant driver Joseph Mehrel and a Police Accident Report. Although the Police Report is not certified, the Plaintiff does not raise an objection to its admissibility. Both drivers are purported to have made admissions in the report. Defendant driver Joseph Mehrel acknowledges that he was double parked and Defendant driver Johnson admits driving into the Mehrel Defendants’ vehicle. In his affidavit, Defendant Joseph Mehrel states that “[a]t the time of the accident, I was stopped next to the parking lane for approximately two minutes.” He then states that “[a]t the time, my vehicle was off and in the park position when suddenly, I felt a heavy impact to the rear of my vehicle.” (See Motion by Mehrel Defendants, Exhibit E, Paragraph 4). “It is well settled that owners of improperly parked cars may be held liable to plaintiffs injured by negligent drivers of other vehicles, depending on the determinations by the trier of fact of the issues of foreseeability and proximate cause unique to the particular case.” *Reuter v. Rodgers*, 232 A.D.2d 619, 620, 648 N.Y.S.2d 989 [2d Dept 1996]; *see also Morales v. Suffolk Cty. DPW*, 185 A.D.3d

680, 681, 124 N.Y.S.3d 850 [2d Dept 2020]; *Mastrogiacomo v. Geohan*, 129 A.D.3d 1035, 1036, 13 N.Y.S.3d 156, 158 [2d Dept 2015]. The Mehrel Defendants have failed to make a *prima facie* showing. See VTL 1163(e). The issue of whether the Mehrel Defendants' vehicle was illegally double parked and as a result a proximate cause of the accident remains a material issue of fact for the trier of fact to determine.

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

The Mehrel Defendants' motion (motion sequence #1) for summary judgment is denied.

The foregoing constitutes the Decision and Order of the Court.

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 Carl J. Landicino, J.S.C.