

Petviashvili v Popa-Riketts

2021 NY Slip Op 34224(U)

October 29, 2021

Supreme Court, Kings County

Docket Number: Index No. 511200/2019

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 29th day of October, 2021.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X
SURAJI PETVIASHVILI,

Plaintiff,

-against-

CHRISTINA POPA-RIKETS, MEREDITH W. BREHM,
and MATTHEW R. BREHM,

Defendants.
-----X

Index No.: 511200/2019

DECISION AND ORDER

Motion Sequence #1

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

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed	15-23,
Opposing Affidavits (Affirmations).....	25
Reply Affidavits (Affirmations)	26

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

This lawsuit arises out of a motor vehicle accident that allegedly occurred on March 1, 2017. The Plaintiff, Suraji Petviashvili (hereinafter the "Plaintiff"), alleges in her complaint that she suffered personal injuries while a passenger in a vehicle owned and operated by Defendant Christina Popa-Rickets (hereinafter "Defendant Popa-Rickets") when that vehicle was allegedly struck in the rear by a vehicle operated by Defendant Meredith W. Brehm and owned by Defendant Matthew R. Brehm (hereinafter "Brehm Defendants"). The collision occurred on the ramp to the Brooklyn Bridge from the FDR Drive in Manhattan, New York.

Defendant Popa Ricketts now moves (Motion Sequence #1) for an order pursuant to CPLR 3212 granting summary judgment and dismissing the Complaint and all Cross-claims against her. Defendant Popa-Ricketts contends that she bears no responsibility for the collision at issue. Specifically, Defendant Popa-Ricketts contends that the collision occurred because the Brehm Defendants' vehicle struck her vehicle in the rear as she slowed due to traffic.

The Plaintiff responds to the motion by arguing that the Court should search the record and find that the Plaintiff is an innocent passenger and grant partial summary judgment in favor of the Plaintiff. The Brehm Defendants have not opposed the motion.

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 N.Y.2d 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 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 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].

Turning to the merits of the motion by Defendant Popa Rickets, the Court finds that she has met her *prima facie* burden. In support of her motion, Defendant Popa Rickets relies on her own deposition, the deposition of the Plaintiff and the deposition of Defendant Meredith Brehm. When asked how long it was that her vehicle was stopped before the rear impact, Defendant Popa Rickets stated that “I don’t remember how long exactly, but I don’t think it was longer than a minute or maybe a little less than.” When asked how she knew an impact had occurred she stated “that sensation of me holding the brakes and the car is still moving and then my whole body moved forward and I managed to hit my head into the steering wheel and first couple of seconds and I realized what had happened.” When asked what part of the vehicle was struck she stated “[t]he back.” When asked if she was wearing her seatbelt at the time she stated “[y]es.” (See Defendant’s Motion, Exhibit D, Pages 22 through 24). These statements are 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].

The Brehm Defendants did not submit opposition papers and as a result have failed to raise a triable issue of fact. What is more, Defendant Meredith W. Brehm acknowledges fault. During her deposition, when asked how the accident happened, she states that “I entered the entrance of the Brooklyn Bridge, did not see the car in front of me, which I did not see the car in front of me and my car hit their bumper.” (See Defendant’s Motion, Exhibit F, Page 14).

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

Defendant Popa-Rickets' motion (motion sequence #1) for summary judgment is granted. The Complaint and all Cross-claims as against Defendant Popa Rickets are dismissed.

The action against Defendant Popa-Rickets is hereby severed and the caption is amended to read as follows:

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SURAJI PETVIASHVILI, Index No.: 511200/2019

Plaintiff,

-against-

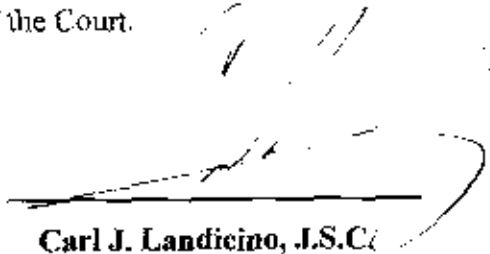
MEREDITH W. BREHM, and MATTHEW R. BREHM,

Defendants.

-----X

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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