

Mora v Moore

2022 NY Slip Op 30641(U)

February 8, 2022

Supreme Court, Kings County

Docket Number: Index No. 504096/2021

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.

0

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 8th day of February, 2022.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

-----X
EDWIN MORA and REBECCA LOPEZ,

Index No.: 504096/2021

Plaintiffs,

-against-

DECISION AND ORDER

RICHARD DWAYNE MOORE and MR. RELIABLE
TRANSPORT LLC

Motions Sequence #1

Defendants.

-----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	8-13,
Opposing Affidavits (Affirmations).....	18-22,
Reply Affidavits (Affirmations)	23-24
Memoranda of Law	15, 17

KINGS COUNTY CLERK
FILED
2022 FEB 25 AM 10:08

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 December 1, 2020. At the time of the occurrence, Plaintiff Rebecca Lopez (hereinafter referred to as "Plaintiff Lopez") was operating a parked vehicle in which Plaintiff Edwin Mora (hereinafter referred to as "Plaintiff Mora") was a passenger (hereinafter referred to collectively as the "Plaintiffs"), when that vehicle was allegedly struck in the rear by a vehicle owned by Mr. Reliable Transport LLC (hereinafter referred to as "Defendant

Reliable Transport”) and operated by Defendant Richard Dwayne Moore (hereinafter referred to as “Defendant Moore”) (hereinafter collectively referred to as the “Defendants”). As part of their complaint, the Plaintiffs allege that at the time of the collision Defendant Moore was employed by Defendant Reliable Transport. The accident purportedly occurred on West 179th Street at or near its intersection with Broadway, in New York, New York.

The Plaintiffs now move (motion sequence #1) for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability as against the Defendants. The Plaintiffs also make an application to dismiss the Defendants’ affirmative defenses relating to the issue of liability and a direction that discovery and the trial proceed on the issue of damages only. The Plaintiffs contend that summary judgment should be granted because at the time of the accident the Plaintiffs’ vehicle was stopped and the Defendants’ vehicle struck the Plaintiffs’ vehicle in the rear. In support of their motion, the Plaintiffs rely on an affidavit by Plaintiff Lopez.

The Defendants oppose the motion. Specifically, the Defendants contend that the Plaintiffs’ motion should be denied as it is premature and there is a genuine issue of material fact regarding liability for the accident. The Defendants contend that the motion is premature as discovery has not been completed. The Defendants also argue that the Plaintiffs’ vehicle was parked illegally, and that this creates an issue of fact as to Plaintiffs’ liability that should result in the Court denying the Plaintiffs’ motion.

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 Plaintiffs to establish, *prima facie*, that the Defendants’ vehicle hit the

Plaintiffs' vehicle in the rear. In support of their application, the Plaintiffs rely primarily on Plaintiff Lopez's affidavit. The Police Report will not be considered in that it was submitted in reply, thereby depriving the Defendants the ability to address it. The Police Accident Report is also not certified. *See Yassin v. Blackman*, 188 AD3d 62, 66, 131 N.Y.S.3d 53, 56 [2d Dept 2020]. In any event, Plaintiff Lopez's affidavit is sufficient to establish a *prima facie* showing. In her affidavit, Plaintiff Lopez stated that "[t]he defendants' motor vehicle was a 2016 Kenworth Tractor Trailer bearing a Minnesota license plate number PAS9062. At the time of accident, the defendants' vehicle was owned by defendant Mr. Reliable Transport LLC and was being operated by defendant Richard Dwayne Moore." Plaintiff Lopez thereafter stated that "[i]mmediately prior to the accident the defendant driver made a turn from Broadway onto West 179th Street and in the process struck the rear of my vehicle on the right side. At the time of impact, I was at a full stop. I had been in that stopped position for almost a full minute before I was struck by the defendant." (See Plaintiff's Motion, Exhibit C, Paragraph 6-8). This evidence is sufficient for the Plaintiffs 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).

In opposition to the motion, the Defendants raise a material issue of fact as to whether Plaintiff Lopez was negligent and a proximate cause of the accident. First, it should be noted that the "motion was not premature since the defendant[s] failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively

within the knowledge and control of the plaintiff.” *Turner v. Butler*, 139 AD3d 715, 716, 32 N.Y.S.3d 174, 175 [2d Dept 2016].

Defendant Moore stated that “[o]n the evening of December 1, 2020, while traveling north on Broadway, I made a lawful left-hand turn at the corner with West 179th Street, which is a one-way roadway running from east to west. At the time I made the turn, on the left-hand side of West 179th Street near the corner with Broadway was the motor vehicle belonging to plaintiffs.” Defendant Moore continues that “Plaintiffs’ Vehicle was stopped or parked approximately 1.5 to 2 feet from the curb on the left-hand side of the street, in a ‘no standing or parking’ zone.” Defendant Moore continues that “[o]n the right-hand side of the corner, there was a city bus also fully stopped, approximately 1 foot from the curb. I attempted to make a left-hand turn and, due to the fact that Plaintiffs’ Vehicle was improperly stopped in the designated area, the left back portion of the trailer came into contact with the right rear panel of Plaintiffs’ Vehicle.” (See Defendant’s Motion, Exhibit 1, Paragraphs 3-11). By means of Defendant Moore’s affidavit, the Defendants did raise an issue of fact as to whether Plaintiff Lopez was negligent and a proximate cause of the collision.

The Court finds that there is an issue of fact as to whether Plaintiff Lopez was comparatively negligent by both 1) illegally parking in a parking space and 2) parking too far away from the curb, thereby obstructing the travel lane in violation of New York City parking rules. Defendant Moore states that “(a) [Plaintiff] was stopped in a ‘no standing or parking zone’ at the time of the Contact; and (b) Plaintiff’s Vehicle was stationed a significant distance from the curb at the time of the Contact.” (See Affirmation in Opposition, Exhibit 2, Paragraph 9). “[O]wners 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

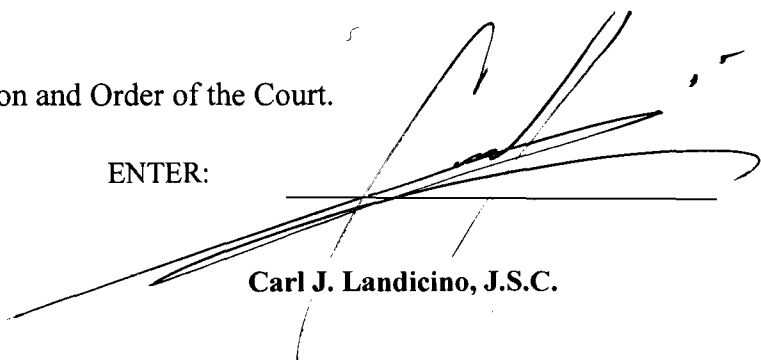
proximate cause unique to the particular case” *Morales v. Suffolk County DPW*, 185 AD3d 680, 681, 124 N.Y.S.3d 850 [2d Dept 2020], quoting *Reuters v. Rodgers*, 232 AD2d 619, 620, 648 N.Y.S.2d 989; see *Mastrogiacomo v. Geohan*, 129 A.D.3d 1035, 1037, 13 N.Y.S.3d 156. See also 35 RCNY 4-08[e]; *Yavkina v. New York City Police Dep’t*, 60 A.D.3d 669, 874 N.Y.S.2d 235. As such, the Plaintiffs’ motion is granted solely to the extent that the Defendants are negligent and a proximate cause of the accident, subject to a comparative negligence analysis at the time of trial in relation to Plaintiff Lopez’s fault, if any. See *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

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

The Plaintiffs’ motion as against the Defendants (motion sequence #1) for summary judgment on the issue of liability is partially granted, and subject to a comparative negligence analysis at the time of trial in relation to Plaintiff Lopez’s fault, if any. Plaintiff Mora is an innocent passenger free from liability.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
 FILED
 2022 FEB 25 AM 10:08