

Kraus v Holley

2022 NY Slip Op 30827(U)

March 4, 2022

Supreme Court, Kings County

Docket Number: Index No. 509387/2020

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 4th day of March 2022.

PRESENT:

HON. CARL J. LANDICINO,
Justice.

-----X

RIVKA KRAUS,
Plaintiff,

Index No. 509387/2020

-against-

DECISION AND ORDER

PAULETTE HOLLEY,
Defendant.

Motion Sequence #1

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

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	4-10,
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 relates to a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on September 10, 2019. Plaintiff Rivka Kraus (hereinafter the "Plaintiff") alleges that she was injured when the vehicle she was in was struck in the rear by a vehicle owned and operated by Defendant Paulette Holley (hereinafter the "Defendant"). The incident allegedly occurred on Francis Lewis Boulevard at or near the intersection of North Conduit Avenue in Queens, 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, dismissing the Defendant's affirmative defense of comparative negligence, and proceeding to trial on the issue of damages. The Plaintiff contends that summary judgment should be granted because Defendant's vehicle was negligent and the sole proximate

cause of the collision. Specifically, the Plaintiff contends that summary judgment should be granted given that there is *prima facie* evidence that Plaintiff's vehicle was hit in the rear by Defendant's vehicle.

The Defendant opposes the motion, arguing that the motion is premature, contending that discovery is outstanding, and depositions are necessary to determine how the collision occurred. The Defendant contends that there is an issue of fact regarding the Plaintiff's own liability.

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]. 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 the Plaintiff's vehicle was in motion. In support of her application, the Plaintiff relies primarily on Plaintiff Rivka Kraus's affidavit and a Police Accident Report. As an initial matter, admissions in the Police Accident Report are admissible given that the report is certified. The Defendant admits to colliding into the rear of the Plaintiff's vehicle in the Police Accident Report. See *Yassin v. Blackman*, 188 AD3d 62, 64, 131 N.Y.S.3d 53, 55 [2d Dept 2020]. In her affidavit, Plaintiff Rivka Kraus states that “[w]hile I was traveling, my vehicle was suddenly struck in the rear with no advance warning by the front of the defendant's vehicle.” (See Plaintiff's motion, Affidavit of Plaintiff Rivka Kraus, Page 1). This statement, together with the admission by the Defendant as reflected in the Police Report, 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]. Further, “[w]hen the driver of an automobile approaches another automobile from the rear, he or she is bound to maintain a reasonably safe rate of speed and control over his [or her] vehicle, and to exercise reasonable care to avoid colliding

with the other vehicle.” *Gaeta v. Carter*, 6 A.D.3d 576, 576, 775 N.Y.S.2d 86 [2d Dept. 2004]; see Vehicle and Traffic Law § 1129 [a]; *Williams v. Spencer–Hall*, 113 A.D.3d 759, 759–760, 979 N.Y.S.2d 157 [2d Dept. 2014]; *Taing v. Drewery*, 100 A.D.3d 740, 741, 954 N.Y.S.2d 175 [2d Dept. 2012].

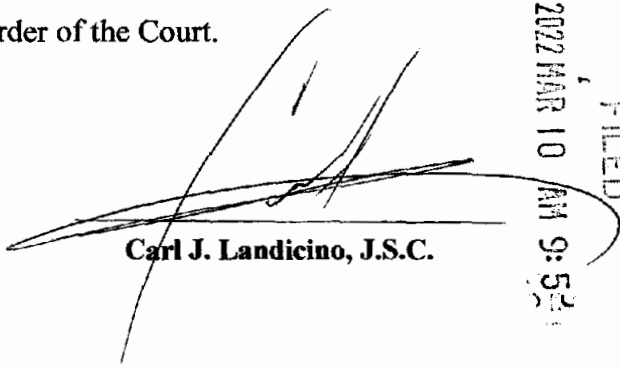
In opposition to the motion, the Defendant has failed to raise a material issue of fact that would prevent this Court from granting the motion. First, it should be noted that “the plaintiff’s motion was not premature since the defendant failed to demonstrate that discovery might lead to relevant evidence 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]. What is more, the Defendant does not submit an affidavit and as a result fails to raise a triable issue of fact. As such the Plaintiff’s motion for summary judgment on the issue of liability, in that the Defendant was negligent and the sole proximate cause of the accident, is granted.

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

The Plaintiff’s motion (motion sequence #1) for summary judgment on the issue of liability is granted in that the Defendant was negligent and the sole proximate cause of the accident, and the Defendant’s affirmative defense of comparative negligence is dismissed. The matter will 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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