Skibityanskaya v Kirkland
2022 NY Slip Op 31343(U)
April 12, 2022
Supreme Court, Kings County
Docket Number: Index No. 500180/2021
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 12th day of April 2022.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

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TSILYA SKIBITYANSKAYA and MARK VINARO, Index No.: 500180/2021

Plaintiffs,

-against- DECISION AND ORDER

KEYSHA KIRKLAND Motions Sequence #1

Defendant.

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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	10-16,
Opposing Affidavits (Affirmations)	21-23,
Reply Affidavits (Affirmations)	25

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 January 10, 2020. Plaintiff Tsilya Skibityanskaya (hereinafter the "Plaintiff")[1] alleges that she was injured when the vehicle she was in was struck in the rear by a vehicle owned and operated by Defendant Keysha Kirkland (hereinafter the "Defendant"). The incident allegedly occurred on the Belt Parkway in Queens, New York.

[1] Plaintiff Mark Vinaro is apparently the husband of Plaintiff Tsilya Skibityanskaya and has brought a derivative claim for loss of services.

The Plaintiff now moves (motion sequence #1) for an order pursuant to CPLR 3212 granting her summary judgment on the issue of liability and dismissing the Defendant's affirmative defense of comparative negligence. The Plaintiff contends that summary judgment should be granted because the 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 the Defendant's vehicle. Additionally, Plaintiff contends that the Court should not consider Defendant's opposition papers as those papers were submitted late and no good cause was proffered.[2] The Defendant opposes the motion and contends that the Plaintiff's application for summary judgment should be denied as there is an issue of fact regarding Plaintiff's comparative negligence, specifically, stopping short and suddenly.

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 A.D.3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 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 A.D.3d 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]. "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.*

[2] Even if the Court did not consider Defendant's opposition, the Court's determination would be the same. Accordingly, the Court will consider and address the Defendant's opposition papers.

Bruno, 124 A.D.3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 A.D.3d 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 A.D.2d 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 A.D.3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick,* 202 A.D.2d 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 A.D.3d 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. In support of her application, the Plaintiff relies upon Plaintiff's Affidavit and the Police Accident Report. As an initial matter, admissions in the Police Accident Report are admissible given that the report is certified. In the Police Accident Report, Defendant agreed with the Plaintiff's statement that Defendant's vehicle collided into the rear of Plaintiff's vehicle when Plaintiff's vehicle stopped short in traffic. *See Yassin v. Blackman*, 188 A.D.3d 62, 64, 131 N.Y.S.3d 53, 55 [2d Dept 2020]. In her affidavit, Plaintiff states that "[s]hortly before the

crash, I was caused to stop short in traffic because the vehicle in front of me stopped short. When the crash happened, I was at a full and complete stop on the West-bound Belt Parkway, left lane, for at least a few seconds. When the crash happened, I was hit from the rear by an Acura SUV." (*See* Plaintiff's motion, Plaintiff's Affidavit of Facts, Page 1). This statement, together with the admission by the Defendant as reflected in the Police Accident Report, are sufficient for the Plaintiff to establish a *prima facie* showing. *See Martinez v. Allen*, 163 A.D.3d 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 A.D.3d 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, the Defendant relies primarily on Defendant's Affidavit and the Police Accident Report. In her affidavit, Defendant states that "[t]he Plaintiff, Tsilya Skibityanskaya's vehicle was directly in front of my vehicle in the same lane of traffic. At the time of the accident, the weather was very sunny. As I was traveling west bound on the Belt Parkway, the vehicle operated by the Plaintiff abruptly stopped their vehicle. I collided into the back of Plaintiff's vehicle." She further states that "[a]t the time of accident, I was looking straight ahead observing traffic conditions while I operated my vehicle. There was no way for me to expect the Plaintiff

would abruptly stop in the middle of the parkway." (*See* Defendant's motion, Affidavit, page 1-2). Defendant also relies on the Police Accident Report in which Plaintiff admits to stopping short in traffic.

Generally, the allegation of a sudden stop without more is insufficient. *See Hakakian v. McCabe*, 38 A.D.3d 493, 494, 833 N.Y.S.2d 106, 107 [2d Dept 2007]. The Defendant alleges that the Plaintiff made an unexpected short stop. However, Defendant does not indicate why the stop was unexpected. Although Plaintiff did acknowledge that she came to a sudden stop, she argues that there was traffic and that she was stopped for a few seconds before her vehicle was hit in the rear. Accepting Plaintiff's version as true, it does not serve as a non-negligent explanation of Defendant's actions. *See*, *Profita v. Diaz*, 100 A.D.3d 481, 954 N.Y.S.2d 40 [1st Dept 2012], *Sass v. Ambu Trans, Inc.*, 238 A.D.2d 570, 657 N.Y.S.2d 69 [2d Dept 1997] and *Krakowska v. Niksa*, 298 A.D.2d 561, 749 N.Y.S.2d 55 [2d Dept 2002]. "Conclusory assertions of a sudden and unexpected stop are insufficient to rebut the inference of negligence." *Shamah v. Richmond County Ambulance Serv.*, 279 A.D.2d 564, 719 N.Y.S.2d 287 [2d Dept 2001]; *see Levine v. Taylor,* 268 A.D.2d 566, 702 N.Y.S.2d 107 [2d Dept 2000]; *Corbly v. Butler,* 226 A.D.2d 418, 641 N.Y.S.2d 71 [2d Dept 1996]; *Benyarko v. Avis Rent A Car Sys.,* 162 A.D.2d 572, 556 N.Y.S.2d 761 [2d Dept 1990]; *Young v. City of New York,* 113 A.D.2d 833, 493 N.Y.S.2d 585 [2d Dept 1985]. Defendant's claim of a sudden unexpected stop is insufficient to establish a non-negligent defense. The Defendant has not raised anything more than a conclusory allegation. Accordingly, the Defendant was negligent and the sole proximate cause of the accident. *See*, *Cajas-Romero v. Ward*, 106 A.D.3d 850, 965 N.Y.S.2d 559 [2d Dept 2013] and *Waide v. ARI Fleet, LT*, 143 A.D.3d 975, 39 N.Y.S.3d 512 [2d Dept 2016].

Insofar as the Defendant has not raised an issue of fact as to Plaintiff's comparative negligence the Defendant's affirmative defense of culpable conduct on the part of the Plaintiff is dismissed. *See Sapienza v. Harrison*, 191 A.D.3d 1028, 142 N.Y.S.3d 584, 588 [2d Dept 2021]; *Kwok King Ng v. West*, 195 A.D.3d 1006, 146 N.Y.S.3d 811, 812 [2d Dept 2021].

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. Defendant was negligent and the sole proximate cause of the accident, and Defendant's affirmative defense relating to Plaintiff's culpable conduct is dismissed. The matter shall proceed on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

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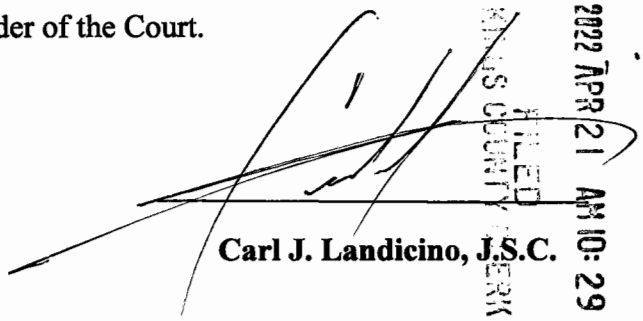

Carl J. Landicino, J.S.C.