

<b>Abzoitov v Kin Le Sang</b>
2022 NY Slip Op 32016(U)
June 13, 2022
Supreme Court, Kings County
Docket Number: Index No. 514290/2019
Judge: Carl J. Landicino
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

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 13<sup>th</sup> day of June 2022.

PRESENT:  
HON. CARL J. LANDICINO,  
Justice.

-----X  
ALISHER ABZOITOV,

Index No.: 514290/2019

*Plaintiff,*

DECISION AND ORDER

-against-

Motions Sequence #5

KIN LE SANG and TUYCHI ASADOV,

*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 .....	67-69, 71-78,
Opposing Affidavits (Affirmations).....	83-84,
Reply Affidavits (Affirmations) .....	87
Memorandum of Law.....	70

2022 JUN 17 AM 10:05

KINGS COUNTY CLERK  
FILED

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 March 3, 2017. At the time of the occurrence, Plaintiff Alisher Abzoitov (hereinafter referred to as the "Plaintiff"), was apparently a passenger in a vehicle he owned that was being operated by Defendant Tuychi Asadov (hereinafter referred to as "Defendant Asadov") ("Asadov Vehicle") The Plaintiff's vehicle was purportedly involved in a collision with a vehicle owned and operated by Defendant Kin Le Sang (hereinafter referred to as "Defendant Sang") ("Sang Vehicle"). The accident apparently occurred at the intersection of 16th Avenue and 63rd Street in Brooklyn, New York.

Defendant Asadov now moves (motion sequence #5), for an order pursuant to CPLR 3212, granting him summary judgment and dismissing the complaint and any and all cross-claims against him. Defendant Asadov contends that summary judgment should be granted in his favor as he argues that he was not liable for the collision at issue. Specifically, Defendant Asadov contends that Defendant Sang was negligent and the proximate cause of the collision in that Sang failed to yield to Asadov's right of way after stopping at a stop sign and collided with the Asadov vehicle. The Plaintiff opposes the motion and argues that it should be denied. The Plaintiff contends that Defendant Asadov was speeding at the time of the collision and was therefore also negligent and a proximate cause of the accident. Defendant Sang has 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 a triable issues of material fact.'" *Kolivas v. Kirchoff*, 14 AD3d 493 [2<sup>nd</sup> 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 [2<sup>nd</sup> Dept, 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d320, 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 [2<sup>nd</sup> 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 [2<sup>nd</sup> Dept, 2006]; see *Menzel v. Plotnick*, 202 A.D.2d 558, 558–559, 610 N.Y.S.2d 50 [2<sup>nd</sup> Dept, 1994]. It is true that “[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 motion (motion sequence #5) by the Defendant Asadov, the Court finds that sufficient evidence has been presented for Defendant Asadov to establish his *prima facie* entitlement to summary judgment. In support of his motion, Defendant Asadov relies primarily on his own deposition, the deposition of the Plaintiff and the Deposition of Defendant Sang. During his deposition, when asked (See Defendant Asadov’s Motion, Exhibit E, Page 19) if there were any stop signs or traffic signals on the street he was travelling on (16<sup>th</sup> Avenue), the Plaintiff answered “[n]o.” When asked if the intersecting street, 63rd Street, had any traffic devices, the Plaintiff stated (Page 19) “[y]es, there was a stop sign.” When asked to describe the collision, the Plaintiff (Page 21) stated “[w]e were going straight and the car hit us from the driver’s side, the driver’s seat.” When asked how fast his vehicle was travelling, the Plaintiff (Page 21) stated “[w]e were travelling the speed limit.” During his deposition Defendant Asadov, (See Defendant Asadov’s Motion, Exhibit F, Page 17), when asked how fast he was travelling, stated “[t]wenty five around.” When asked if he had a stop sign on the street he was travelling (Page 22), Defendant Asadov stated “[n]o stop sign, and not even a traffic light.” This evidence is sufficient for Defendant Asadov to meet his *prima facie* burden establishing that Defendant Sang “failed to yield the right of way after stopping at a stop sign controlling traffic in violation of Vehicle and

Traffic Law § 1142(a).” *Hull v. Spagnoli*, 44 AD3d 1007, 1007, 844 N.Y.S.2d 416, 417 [2d Dept 2007]; see also *Friedberg v. Citiwide Auto Leasing, Inc.*, 22 AD3d 522, 523, 801 N.Y.S.2d 770, 771 [2d Dept 2005]; *Hunt v. New York City Transit Auth.*, 166 AD3d 735, 737, 87 N.Y.S.3d 563 [2d Dept 2018] and *Fernandez v. Am. United Transportation, Inc.*, 177 A.D.3d 704, 707, 113 N.Y.S.3d 145 [2d Dept 2019].

As stated, both Defendant Asadov and Plaintiff stated during their respective depositions that Asadov was not travelling above the speed limit. Plaintiff’s counsel’s allegation that Asadov was speeding is of no moment because he has no personal knowledge of the facts relating to the collision. However, to support the Plaintiff’s contention that Asadov was speeding at the time of the accident, Plaintiff relies upon the deposition testimony of Defendant Sang.<sup>1</sup> The Plaintiff contends that Sang’s allegation that Defendant Asadov was speeding raises an issue of comparative fault on the part of Defendant Asadov and should therefore serve to deny Defendant Asadov’s motion. Asadov in reply contends that since Sang failed to yield the right of way, Asadov’s speed cannot be a substantial factor of the collision and that in any event, Sang was in no position to conclude that Asadov was speeding.

During his deposition Defendant Sang stated that the front of his vehicle collided with the driver’s side front of Asadov’s vehicle. “When I was at the stop sign, I did not see his car, his car was driving very fast.”(See Sang Deposition, NYSCEF Doc 70, Pages 11-12). Defendant Sang stated that he saw the Asadov vehicle “two seconds” before the collision. (Sang Deposition, Pages 28-29). Sang initially stated he did not know how fast the Asadov vehicle was driving (Sang Deposition, Pages 42-43) Although Plaintiff’s counsel states that Sang indicated the speed of Asadov’s vehicle, a review of the deposition belies that representation. (Sang Deposition, Pages 9,

---

<sup>1</sup> The Court notes that Plaintiff during his deposition, stated that Asadov was not speeding and Sang has not opposed the subject motion.

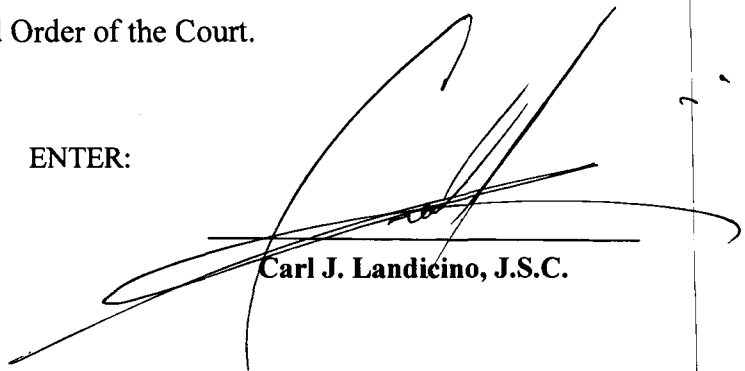
20-21, 37, 39-40). *See Strocchia v. City of New York*, 70 A.D.3d 926, 927, 894 N.Y.S.2d 531 [2d Dept 2010]; *Gonzalez v. City of New York*, 295 AD2d 122, 742 N.Y.S.2d 301 [1st Dept 2002]; *Adobea v. Junel*, 114 AD3d 818, 819, 980 N.Y.S.2d 564 [2d Dept 2014]. As such, the Plaintiff has failed to raise an issue of fact as to Defendant Asadov's comparative fault. Therefore the motion is granted.

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

Defendant Asadov's motion (motion sequence #5) is granted. The Complaint and all cross-claims, as against Defendant Asadov are dismissed.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
Carl J. Landicino, J.S.C.

2022 JUN 17 AM 10:06  
KINGS COUNTY CLERK  
FILED  
*mao*