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 5th day of November, 2022.

P R E S E N T:
HON. CARL J. LANDICINO,
Justice.

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TONYA BRUNDAGE,

Plaintiff,

- against -

ROBERT CRUZ, IMPERIAL RESTORATION & MAINTENANCE GROUP, LLC, DZHAMOLBEK NAZAROV AND BORO MANAGEMENT CORP.,

Defendants.

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Index No.:506688/2020

DECISION AND ORDER

Motion Sequence #2

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.....	31-38,
Opposing Affidavits (Affirmations).....	39-40,
Reply Affidavits (Affirmations)(Memo of Law).....	42,

After oral argument submission and a review of the submitted papers, the Court finds as follows:

The instant action is a claim for personal injuries arising from a motor vehicle collision that allegedly occurred on November 8, 2019. The Plaintiff, Tonya Brundage (the "Plaintiff") alleges that she was injured when the vehicle she was a passenger in, which was owned by Defendant Boro Management Corp. and operated by Defendant Dzhamolbek Nazarov (hereinafter the "Boro Defendants"), collided with a vehicle owned by Defendant Imperial Restoration & Maintenance Group, LLC and operated by Defendant Robert Cruz (hereinafter the "Imperial

Defendants"). The incident allegedly occurred on the Jackie Robinson Parkway, in Queens, New York.

The Imperial Defendants now move (motion sequence #2) for an order, pursuant to CPLR 3212, granting them summary judgment and dismissal of the complaint. The Imperial Defendants argue that their vehicle was rear ended by the Boro Defendants' vehicle. As such, the Imperial Defendants argue that they were not a proximate cause of the accident and, accordingly, Plaintiff's alleged injuries. The Boro Defendants oppose the motion. The Boro Defendants argue that the motion should be denied as it is premature, and discovery remains outstanding. The Boro Defendants also contend that there are issues of fact regarding how the accident occurred. The Plaintiff has not opposed the motion.

Generally, "[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 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 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 NY2d320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 N Y2d 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." *Graham & 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 A.D2d 58, 558-559, 610 N.Y.S.2d 50 [2d Dept 1994].

Turning the merits of the motion by the Imperial Defendants, the Court finds that they have met their *prima facie* burden. In support of their application, the Imperial Defendants rely on a Police Accident Report and the deposition of Defendant Cruz. As part of his deposition, when Defendant Cruz was asked about his speed as he approached the entrance to the Jackie Robinson Expressway, he stated "[i]t came to a halt and then I felt the impact in the back." When asked again if his vehicle was stopped, Defendant Cruz stated "[y]eah, the traffic in front of me stopped, so everything stopped." (See Imperial Defendants' Motion, Exhibit "D", Page 16). When asked how long his vehicle was stopped, Defendant Cruz stated "[l]ike maybe a couple of seconds, I could say." When asked if any other vehicles were involved in the collision, Defendant Cruz stated "[n]o, just between me and him, that's it." (See Imperial Defendants' Motion, Exhibit "D", Page 17). When asked what part of the other vehicle came into contact with his vehicle, Defendant Cruz stated "[t]he front of his car hit the back of my car." (See Imperial Defendants' Motion, Exhibit "D", Page 18). The certified Police Accident Report reflects, in pertinent part, that "[d]river of vehicle 2 [Nazarov] states he was heading westbound on the Jackie Robinson when vehicle 1 [Boro Defendants' Vehicle] slowed down and vehicle 2 couldn't stop in time." As an initial matter, this statement made in the Police Accident is admissible given that the report is certified and the statement constitutes an admission. *See Yassin v. Blackman*, 188 AD3d 62, 64, 131 N.Y.S.3d 53, 55 [2d Dept 2020]. In any event, Defendant Cruz's statements in his deposition are sufficient for the Imperial Defendants 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." *Tumminello v. City of New York*, 148 AD3d 1084, 49 N.Y.S.3d 739 [2d Dept 2017]; *Klopchin v. Masri*, 45 AD3d 737, 846 N.Y.S.2d 311 [2d Dept 2007].

In opposition to the motion, the Boro Defendants fail to raise a material issue of fact that would prevent this Court from granting the motion made by the Imperial Defendants. As to the Boro Defendants' position that the motion is premature, it should be noted that the "motion was not premature since these 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]. Moreover, "[i]n opposition, the defendant, who did not submit his own affidavit or an affidavit from a person with personal knowledge of the facts, failed to raise a triable issue of fact." *Maliakel v. Morio*, 185 AD3d 1018, 1019, 129 N.Y.S.3d 99, 101 [2d Dept 2020]. There was no affidavit proffered by the Boro Defendants. As such, the Boro Defendants have failed to raise a material issue of fact. Accordingly, the Imperial Defendant's motion is granted, and the complaint is dismissed as against the Imperial Defendants.

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

The Imperial Defendants' motion (motion sequence #2) is granted. The Plaintiff's complaint and any cross-claims as against the Imperial Defendants are dismissed.

This constitutes the Decision and Order of the Court.

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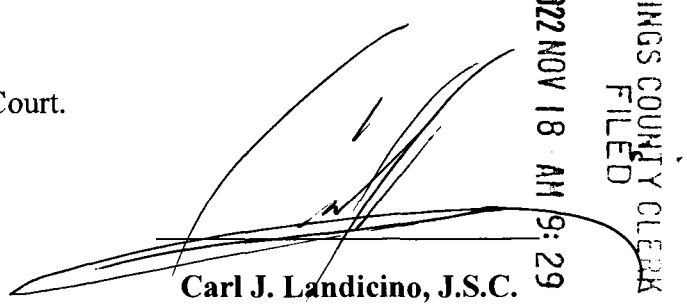

Carl J. Landicino, J.S.C.