

**Camacho v Katehis**

2023 NY Slip Op 31106(U)

March 28, 2023

Supreme Court, Kings County

Docket Number: Index No. 503465/2022

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.

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 28th day of March 2023.

PRESENT:

HON. CARL J. LANDICINO,  
Justice.

-----X  
SANTO CAMACHO and WILLIAM TORRES,

*Plaintiff,*

-against-

ALEXANDROS K. KATEHIS,

*Defendants.*

Index No.: 503465/2022

DECISION AND ORDER

Motions Sequence #1

-----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 .....	8-16,
Opposing Affidavits (Affirmations).....	18-21,
Reply Affidavits (Affirmations) .....	23

2023 APR -4 AM 10:09  
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 allegedly arising from a motor vehicle collision that occurred on June 13, 2019. Plaintiffs Santo Camacho (“Camacho”) and William Torres (“Torres”) (hereinafter referred to individually or collectively as the “Plaintiffs”) allege that they were injured when their vehicle was struck in the rear by a vehicle owned and operated by Defendant Alexandros K. Katehis (hereinafter the “Defendant”). The incident allegedly occurred on the eastbound side of the Brooklyn Queens Expressway at or near Flushing Avenue, in Brooklyn, New York.

The Plaintiffs now move (motion sequence #3) for an order pursuant to CPLR 3212 granting them summary judgment on the issue of liability and dismissing the Defendant's affirmative defenses of comparative fault. The Plaintiffs contend that summary judgment should be granted because the Defendant's vehicle was negligent and the sole proximate cause of the collision. Specifically, the Plaintiffs contend that summary judgment should be granted given that there is *prima facie* evidence that Plaintiffs' vehicle was hit in the rear by the Defendant's vehicle. In support of their application the Plaintiffs rely on affidavits from Plaintiff Camacho and Torres, and a Police Accident Report. The Defendant opposes the motion and contends that Plaintiff's application for summary judgment should be denied as the motion is premature in so far as discovery has not been completed.

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, 787 N.Y.S.2d 392 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341 [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, 778 N.Y.S.2d 98 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316 [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, 538 N.Y.S.2d 837 [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 NY3d 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 Defendant’s vehicle hit the Plaintiffs’ vehicle in the rear. In support of their application, the Plaintiffs rely upon an affidavit from each of the Plaintiffs and the certified police accident report. As an initial matter, the certified police accident report is admissible and the statement by Defendant driver that “Driver 1 [Defendant] states he was looking at something else when Vehicle 1 did rear end Vehicle 2.” (See Plaintiffs’ Motion, Exhibit “D”). The statement constitutes an admission and is admissible. *See Yassin v. Blackman*, 188 AD3d 62, 64, 131 N.Y.S.3d 53, 55 [2d Dept 2020]. In his affidavit, Plaintiff Camacho states that “on June 13, 2019, at approximately 6:55 P.M., I was operating my motor vehicle on 278I Eastbound Brooklyn Queens Expressway at or near Flushing Avenue, in the County of Kings, City and State of New York.” Camacho further states that “[o]n June 13,

2019, I was slowing down my motor vehicle due to the traffic in front of me when the Defendant's motor vehicle struck my motor vehicle in the rear." Camacho also states that "[a]fter the Defendant struck my motor vehicle in the rear, the Defendant, Alexandros K. Kathehis, told me that he fell asleep before rear ending my motor vehicle." (See Plaintiffs' Motion, Exhibit "E"). In his affidavit, Plaintiff Torres states that "on June 13, 2019, at approximately 6:55 P.M., I was a front seat passenger in a motor vehicle being operated by Plaintiff, SANTO CAMACHO, on 278I Eastbound Brooklyn Queens Expressway at or near Flushing Avenue, in the County of Kings, City and State of New York." Torres also states that "[i]mmediately prior to and at the time of the accident, the Plaintiff, Santo Camacho, was slowing down his motor vehicle due to the traffic in front of him, when the Defendant's motor vehicle rear ended the motor vehicle operated by Plaintiff, Santo Camacho, which was the motor vehicle that I was a front seat passenger in."

These statements are 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]. 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 AD3d 576, 576, 775 N.Y.S.2d 86 [2d Dept. 2004]; see Vehicle and Traffic Law § 1129 [a]; *Williams v. Spencer-Hall*, 113 AD3d 759, 759-760, 979 N.Y.S.2d 157 [2d Dept 2014]; *Taing v. Drewery*, 100 AD3d 740, 741, 954 N.Y.S.2d 175 [2d Dept 2012].

In opposition, the Defendant relies on his attorney's affirmation. 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]. What is more, the Defendant does not submit an affidavit from a person with knowledge of the facts. The conclusory allegation of a sudden stop without more is insufficient. *See Hakakian v. McCabe*, 38 AD3d 493, 494, 833 N.Y.S.2d 106, 107 [2d Dept 2007].

Insofar as the Defendant has not raised an issue of fact as to Plaintiffs' comparative negligence and the Plaintiffs have moved for the dismissal of Defendant's affirmative defense in relation to culpable conduct, the Defendant's affirmative defenses of culpable conduct on the part of the Plaintiffs are dismissed. *See Sapienza v. Harrison*, 191 AD3d 1028, 142 N.Y.S.3d 584, 588 [2d Dept 2021]; *Kwok King Ng v. West*, 195 AD3d 1006, 146 N.Y.S.3d 811, 812 [2d Dept 2021].

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

The Plaintiffs' motion (motion sequence #1) for summary judgment on the issue of liability is granted to the extent that the Defendant driver was negligent and the proximate cause of the accident, and the Defendant's first and second affirmative defenses are dismissed. The matter shall proceed on the issue of damages.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

2023 APR -4 AM 10:09  
KINGS COUNTY CLERK  
FILED