

**Valdez v Prospektive Inc.**

2023 NY Slip Op 32021(U)

June 13, 2023

Supreme Court, Kings County

Docket Number: Index No. 516516/2022

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 13<sup>th</sup> day of June, 2023.

PRESENT:  
HON. CARL J. LANDICINO,  
Justice.

-----X  
JOSE E. VALDEZ,

Index No.: 516516/2022

*Plaintiff,*

-against-

DECISION AND ORDER

PROSPEKTIVE INC. and JOHN DOE, name being fictitious and meant to be the operator of defendant's motor vehicle,

Motion Sequence #1

*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 .....	19-20, 22-23,
Opposing Affidavits (Affirmations).....	26,
Reply Affidavits (Affirmations) .....	28,
Memorandum of Law .....	21.

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

Plaintiff, Jose E. Valdez (the "Plaintiff"), moves (motion sequence #1) for summary judgment on the issue of liability and setting this matter down for trial on damages. Plaintiff alleges that while driving on the Van Wyck Expressway, in medium traffic, at approximately 30 mph, the vehicle purportedly owned by co-defendant, Prospektive Inc. (the "Defendant Owner") and driven by co-defendant John Doe (the "Defendant Driver") collided with the rear of Plaintiff's vehicle without warning,. The collision allegedly occurred on March 23, 2022 on the Van Wyck Expressway, in Queens New York.

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].

“A rear-end collision with a stopped or stopping vehicle establishes a *prima facie* case of negligence on the part of the operator of the rear vehicle...” *Martinez v. Allen*, 163 AD3d 951, 82 N.Y.S.3d 130 [2d Dept 2018]. Also, “[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]; *Fergile v. Payne*, 202 AD3d 928, 929, 163 N.Y.S.3d 216, 218 [2d Dept 2022]; *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].

Plaintiff provides his own affidavit. In his affidavit, Plaintiff states that “traffic was medium,” “I was moving along with traffic, traveling approximately 30 miles per hour.” “Suddenly and without warning my car was struck in the rear by Defendant’s vehicle.” “I did not see Defendant’s vehicle before the impact.” “I did not hear any car horns or screeching tires or brakes before being hit in the rear.” Plaintiff has made a *prima facie* showing of negligence on the part of the Defendant Driver and Plaintiff’s freedom from comparative fault.

In opposition, the Defendant Owner provides an attorney affirmation. Defendant Driver contends that Plaintiff’s motion is premature in that discovery has not been completed. The motion is not premature. Motions for summary judgement have been denied as premature when a party opposing summary judgment is entitled to further discovery and “when it appears that facts supporting the position of the opposing party exist but cannot be stated.” *Family-Friendly Media, Inc. v. Recorder Television Network*, 74 A.D.3d 738, 739, 903 N.Y.S.2d 80, 81 [2<sup>nd</sup> Dept, 2010];

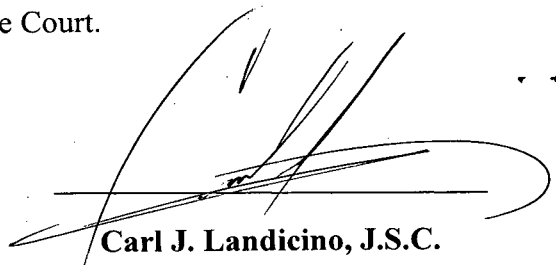
see *Aurora Loan Servs., LLC v. LaMattina & Assoc., Inc.*, 59 A.D.3d 578, 872 N.Y.S.2d 724 [2<sup>nd</sup> Dept, 2009]; *Juseinoski v. New York Hosp. Med. Ctr. of Queens*, 29 A.D.3d 636, 637, 815 N.Y.S.2d 183 [2<sup>nd</sup> Dept, 2006]. Defendant Owner has failed to raise a material issue of fact. The Plaintiff has requested that the matter proceed on the issue of damages, which is tantamount to seeking dismissal of affirmative defenses relating to culpable conduct. 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]. The Plaintiff has established that Defendant Driver was negligent and the proximate cause of the accident. Accordingly, the Plaintiff's motion is granted.

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

The Plaintiff's motion for summary judgment on the issue of liability (motion sequence #1) is granted and 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.**