

Osiecki v Symo Corp.
2020 NY Slip Op 30246(U)
January 22, 2020
Supreme Court, Kings County
Docket Number: 519869/2018
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 22nd day of January, 2020.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

-----X
CAROL OSIECKI,

Index No.: 519869/2018

Plaintiff,

DECISION AND ORDER

- against -

SYMO CORPORATION and MOHAMED
IBRAHIM NAGY WAEL,

Motions Sequence #1,

Defendants.

-----X
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	1/2. _____
Opposing Affidavits (Affirmations).....	3. _____
Reply Affidavits (Affirmations).....	4. _____
Memorandum of Law.....	5. _____

Upon the foregoing papers, and after oral argument, the Court finds as follows:

This lawsuit arises out of a motor vehicle accident that allegedly occurred on January 27, 2017. Plaintiff Carol Osiecki (hereinafter “the Plaintiff”) alleges in her Complaint that on that date she suffered personal injuries after the vehicle she was operating was struck in the rear by a vehicle operated by Defendant Mohamed Ibrahim Nagy Wael (hereinafter “the Defendant”). The Plaintiff further alleges in her complaint that the collision occurred while her vehicle was at a complete stop on the Belt Parkway in Brooklyn, New York.

The Plaintiff moves (motions sequence #1) for an order pursuant to CPLR 3212 granting summary judgment on the issue of liability, and proceeding to trial on the issue of damages. The Plaintiff contends that summary judgment should be granted in favor of the Plaintiff on the issue of liability given that the Plaintiff's motor vehicle was rear ended while stopped, which demonstrates liability in favor of the Plaintiff. In opposition, the Defendant argues that the motion should be denied as there are triable issues of fact that should prevent this Court from granting summary judgment at this time.

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 triable issues of material fact.’” *Kolivas v. Kirchoff*, 14 AD3d 493 [2nd 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 [2nd 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].

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 [2nd 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 [2nd Dept, 2006]; see *Menzel v. Plotnick*, 202 A.D.2d 558, 558–559, 610 N.Y.S.2d 50 [2nd Dept, 1994].

Turning to the merits of the instant motion, the Court finds that sufficient evidence has been presented to establish, *prima facie*, that the Defendant was the sole proximate cause of the accident. In support of its application, the Plaintiff relies on her affidavit. The Plaintiff stated that “I was stopped for approximately four (4) seconds, when my vehicle was struck in the rear by a 2013 Toyota motor vehicle owned by the Defendant SYMO CORPORATION and operated by Defendant, MOHAMED IBRAHIM NAGY WAEL.” The affidavit of the Plaintiff is 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 [2nd 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 [2nd Dept, 2007].

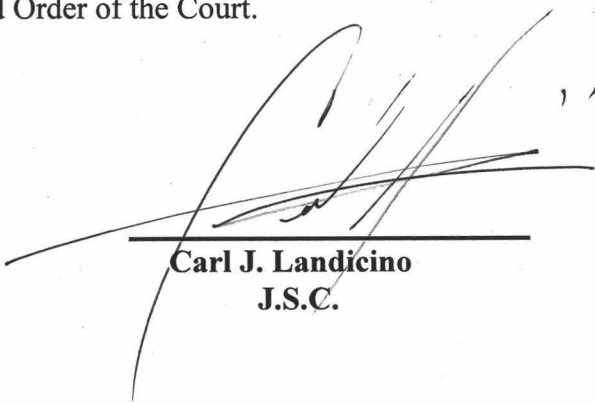
In opposition to the motion, the Defendant has failed to raise a material issue of fact that would prevent this Court from granting the Plaintiff’s motion. The Defendant states that Plaintiff made a short stop, that traffic was heavy and that he was traveling approximately twelve miles per hour. Defendant acknowledges in his affidavit that “I pressed the breaks hard but I was not able to come to a complete stop. Front [sc] of my vehicle made a slight contact with adverse vehicle which caused accident [sic] to occur.” This, without more, is insufficient to raise an issue of fact. Therefore, the Defendant Driver’s actions were the sole proximate cause of the accident. *See Hakakian v. McCabe*, 38 A.D.3d 493, 494, 833 N.Y.S.2d 106, 107 [2nd Dept, 2007]; see also *Tumminello v. City of New York*, 148 A.D.3d 1084, 1085, 49 N.Y.S.3d 739, 741 [2nd Dept, 2017].

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

Plaintiff's motion (motion sequence #1) is granted. The Plaintiff is awarded summary judgment on the issue of liability as against the Defendants 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.

**KINGS COUNTY CLERK
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