

Johnson v Sagaille
2020 NY Slip Op 35307(U)
October 28, 2020
Supreme Court, Kings County
Docket Number: Index No. 514959/2018
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 28th day of October, 2020.

PRESENT:
HON. CARL J. LANDICINO,
Justice.

-----X
CARLINE JOHNSON,
Plaintiff,

- against -

SAM SAGAILLE,
Defendant,
-----X

Index #: 514959/2018

DECISION AND ORDER

Motion Sequence #4

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

	<u>Papers Numbered (e-file)</u>
Notice of Motion and Affidavits (Affirmations) Annexed	42-48
Opposing Affidavits (Affirmations)	49
Reply Affidavits (Affirmations)	51

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

The instant matter is a personal injury action relating to a motor vehicle accident on November 2, 2016 that occurred at or near 963 Remsen Avenue, Brooklyn, New York. The Plaintiff, Carline Johnson (hereinafter referred to as the "Plaintiff") was allegedly stopped at a traffic light and was struck in the rear by the Defendant, Sam Sagaille (hereinafter referred to as the "Defendant"). The Plaintiff now moves (motion sequence #4) for an order, pursuant to CPLR 3212, granting the Plaintiff summary judgment on the issue of liability.

The Defendant opposes the motion (motion sequence #4) arguing that the Plaintiff has failed to meet her *prima facie* burden. The Defendant contends that the Plaintiff's affidavit is self-serving and is insufficient to warrant summary relief. The Defendant also contends that the

affidavit does not sufficiently detail the surrounding circumstances of the accident. Further, the Defendant contends that the Police Report is inadmissible because it is uncertified. Even further, the Defendant believes that the motion is premature since there are facts essential to oppose the motion that are exclusively within the Plaintiff's possession, since there have been no depositions conducted to date and the Plaintiff is the sole witness to the accident.

The Plaintiff, in reply, argued that the defense counsel's affirmation cannot rebut the *prima facie* showing of negligence because it is not based on personal knowledge of the facts. Also, the Plaintiff argues that the Defendant is negligent as a matter of law.

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 [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 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [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 A.D.3d 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.” *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 AD 558, 558-559, 610 N.Y.S.2d 50 [2d Dept 1994].

“When a defendant operates a vehicle that strikes another vehicle in the rear, the defendant is subject to a presumption that he or she was negligent in failing to keep a safe distance between the vehicles, although such presumption may be overcome by the presentation of evidence sufficient to rebut the inference of negligence (*see Karakostas v. Avis Rent A Car Sys.*, 301 AD2d 632, 756 N.Y.S.2d 61; 101 *Reed v. New York City Tr. Auth.*, 299 AD2d 330, 749 N.Y.S.2d 91; *Leal v. Wolff*, 224 AD2d 392, 638 N.Y.S.2d 110).” (*Abramov v. Campbell*, 303 AD2d 697, 697–98, 757 N.Y.S.2d 100, 100–01 [2d Dept., 2003]).

The Plaintiff has met her *prima facie* burden. 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]. No such evidence was presented by the Defendant. There is no material issue of fact requiring a trial present and the motion is not premature since the Defendant would have firsthand knowledge of the circumstances but chose not to proffer his recollection for consideration. The uncertified police report is inadmissible. However, the

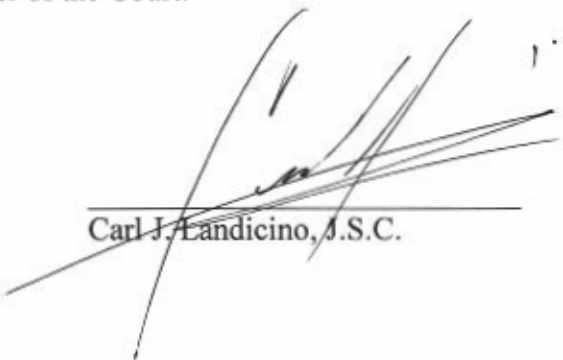
Plaintiff's other evidence, her testimony, is sufficient to make a *prima facie* showing. Therefore, the Plaintiff's motion (motion sequence #4) is granted. The Plaintiff is awarded summary judgment on the issue of liability, in that the Defendant was negligent and the sole proximate cause of the accident.

It is hereby ordered:

Motion Sequence #4 is granted, the Plaintiff is awarded summary judgment on the issue of liability, in that the Defendant was negligent and the sole proximate cause of the accident. The matter shall proceed on the issue of damages.

This constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.



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