Andriotis v Young
2018 NY Slip Op 34519(U)
December 26, 2018
Supreme Court, Bronx County
Docket Number: Index No. 20810/2018E
Judge: John R. Higgitt
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NEW YORK SUPREME COURT – COUNTY OF BRONX Mtn. Seq. # 01

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

--X

ANDRIOTIS, JOHN Index №. **20810/2018E**

- against - Hon. **JOHN R. HIGGITT**,

YOUNG, BOBBY L., et ano. A.J.S.C.

--X

The following papers numbered 13 to 18 and 21 to 23 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT**, noticed on **August 16, 2018** and duly submitted as No. **21** on the Motion Calendar of **November 14, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	13-18
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	21-22
Replying Affidavit and Exhibits	23
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: **12/26/2018**

Hon.

JOHN R. HIGGITT, A.J.S.C.

Check one:
☐ Case Disposed in Entirety
◙ Case Still Active

Motion is:
◙ Granted ☐ GIP
☐ Denied ☐ Other

Check if appropriate:
◙ Schedule Appearance
☐ Fiduciary Appointment
☐ Referee Appointment
☐ Settle Order
☐ Submit Order

[*1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14
---X
JOHN ANDRIOTIS,

Plaintiff,

- against -

BOBBY L. YOUNG and SAM D. YOUNG,

Defendants.
---X

DECISION AND ORDER

Index No. 20810/2018E

John R. Higgitt, J.

This negligence action arises out of a rear-end collision that occurred at the intersection of Howard Avenue and Saint John's Place in Brooklyn on March 25, 2017. Plaintiff seeks partial summary judgment on the issue of defendants' liability.

The motion is determined as follows:

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). CPLR 3212(b) requires the court to determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit" (*id.*). The evidence submitted by the movant must be viewed in the light most favorable to the non-movant (*see Jacobsen v N.Y. City Health & Hosps. Corp.*, 22 NY3d 824 [2014]; *see also Torres v Jones*, 26 NY3d 742 [2016]; *Andre v Pomeroy*, 35 NY2d 361 [1974]). Summary judgment should be granted only where there are no issues of material fact, dictating that the court direct judgment in favor of the movant as a matter of law (*see Friends of Animals, Inc. v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]). Once the movant makes a prima facie showing, the burden shifts to the party opposing the

motion to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact warranting denial of the motion (*see Alvarez v Prospect Hosp.*, supra; *Zuckerman v City of New York*, supra).

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate, non-negligent explanation for the accident" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]; *see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]; *Agramonte v City of New York*, 288 AD2d 75 [1st Dept 2001]). Furthermore, "Vehicle and Traffic Law § 1129 imposes a duty to be aware of traffic conditions, including vehicle stoppages" (*Corrigan v Porter Cab Corp.*, 101 AD3d 471, 472 [1st Dept 2012]).

Plaintiff satisfied his prima facie burden establishing his entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]; *Matos v Sanchez*, supra; *Corrigan v Porter Cab Corp.*, supra). Plaintiff submits a copy of the pleadings, affidavits of merit, and an uncertified police report.[1]

Plaintiff, in a signed and notarized affidavit, states that his vehicle had been stopped at a red light when the defendants' vehicle impacted the rear end of plaintiff's vehicle. Plaintiff identifies defendants' vehicle and states it was owned by defendant Sam D. Young and operated by defendant Bobby L. Young.

The burden now shifts to defendants to submit evidentiary proof in admissible form to raise a triable issue of material fact (*see Zuckerman v City of New York*, supra). The affirmation of counsel alone is not sufficient to rebut plaintiffs' prima facie showing of entitlement to summary

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[1] The First Department has consistently held that an "uncertified police report attached to counsel's affirmation constitutes inadmissible hearsay" (*Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]; *see Raposo v Robinson*, 106 AD3d 593 [1st Dept 2013]; *Rivera v GT Acquisition 1 Corp.*, 72 AD3d 525 [1st Dept 2010]; *Coleman v Maclas*, 61 AD3d 569 [1st Dept 2009]).

judgment (*see Zuckerman v City of New York*, supra). In addition, bald, conclusory allegations, even if believable, are not enough (*see Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255 [1970]; *Edison Stone Corp. v 42nd Street Dev. Corp.*, 145 AD2d 249 [1st Dept 1989]). Even if admissible, the affirmation in opposition of counsel fails to raise any issue of triable fact.

Defendants' counsel also argues that the motion is premature inasmuch as no discovery has yet taken place. However, plaintiff's motion is not premature because "the information as to why [the defendants' vehicle] struck the rear end of plaintiff[s]' car reasonably rests within defendant driver's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda v DO & CO New York Catering, Inc,* supra; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.,* 300 AD2d 89 [1st Dept 2002]).

For the foregoing reasons, it is hereby

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident is granted; and it is further

ORDERED, that the parties shall appear before the undersigned in Part 14, courtroom 407, at 2:00 p.m. on **February 15, 2019** for preliminary conference.

This constitutes the decision and order of the court.

Dated: December 26, 2018

John R. Higgitt, A.J.S.C.