

<b>Bazin v City of New York</b>
2007 NY Slip Op 32414(U)
August 1, 2007
Supreme Court, New York County
Docket Number: 0110145/2005
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT *Rakower*

PART 5

Index Number : 110145/2005

BAZIN, NADEGE

vs

CITY OF NEW YORK

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1

2, 3

4

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

**DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER**

**FILED**  
AUG 06 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 8/1/07

*[Signature]*  
**HON. EILEEN A. RAKOWER**  
J.S.C.

Check one  FINAL DISPOSITION  NON FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
NADEGE BAZIN,

Plaintiff,

Index No.  
111838/02

- against -

DECISION/ORDER

THE CITY OF NEW YORK, ANNABELLE GARGANIAN,  
SHEENA L. GARGANIAN and RICHARD WILLIAMS,

Defendants.

-----  
HON. EILEEN A. RAKOWER

**FILED**  
AUG 06 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff brings this action for personal injuries allegedly sustained when he was struck by a car at the intersection of Macdougall Street and West 3<sup>rd</sup> Street, New York New York on May 20, 2005. Defendant the City of New York ("City") moves for summary judgment. Plaintiff and defendant Richard Williams oppose the motion. Defendants Annabelle Garganian and Sheena Garganian do not submit papers.

A car owned by Annabelle Garganian and driven by her sister, Sheena Garganian, ("vehicle one") collided with a car driven by Mr. Williams ("vehicle two") on May 20, 2005. Vehicle one spun out of control and hit a parked car ("vehicle three"). Vehicle one then jumped the curb, struck plaintiff and crashed into the wall of Bens Pizza ("Ben's"), a restaurant located at 125 Macdougall Street. According to the police report, the drivers of both vehicle one and vehicle two claimed to have had a green light at the intersection. Plaintiff alleges that this malfunctioning traffic light was the cause of the accident.

City, in support of its motion, argues that it did not have notice of the malfunctioning traffic light before the date of the accident. City submits a search document from the Department of Transportation ("DOT") which states that there were "no traffic signal maintenance and repair records found for D.O.A." and that "no defect of the signal at the location above was reported." Included in the DOT report is a "signal timing" report dated May 20, 2005. The search spanned from March 20,

2005 until May 20, 2005. Additionally, City submits an affidavit by Margaret Pendaris, member of the Record Management Unit, who states that she conducted the DOT search and attests to the aforementioned information.

Plaintiff opposes and argues that the city had both actual and constructive notice of the alleged malfunction. Plaintiff submits the affidavit of Michael Lipsky, an employee of Ben's. Mr. Lipsky states that he could recall numerous accidents at the subject intersection over the seven years that he was employed there. Specifically, Mr. Lipsky recalls that in January 2005, the lights on either side of the intersection were blinking green and that, as a result, there was an accident and one of the cars hit his store. Further, Mr. Lipsky states:

The traffic lights were not working properly on May 18, 2005. There was a traffic agent directing traffic. The lights were not operating at all. A repair truck finally arrived. (Lipsky Aff. Paragraph 4).

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 (1980). In addition, bald, conclusory allegations, even if believable, are not enough. *Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255, 309 N.Y.S.2d 341, 257 N.E.2d 890 (1970).

City has submitted search results showing that there have been no complaints or repairs made for the subject location for two months prior to plaintiff's accident. However, Mr. Lipsky's observations that the light malfunctioned several times prior to plaintiff's accident raises an issue of fact as to whether the City had notice. Certainly, it raises an issue of fact as to whether the City's records are reliable and conclusive on the issue of notice. Issues of credibility cannot be resolved on a motion for summary judgment. (*Medina v. 203 West 109<sup>th</sup> St. Realty*, 16 A.D.3d 220 [1<sup>st</sup> Dept. 2005]; *Santos v. Tempco Serv. Indus.*, 295 A.D.2d 218 [1<sup>st</sup> Dept. 2002]).

Wherefore it is hereby

ORDERED that defendant the City of New York's motion for summary judgment is denied.

This constitutes the Decision and Order of this Court. All other relief requested is denied.

DATED: July 31, 2007

  
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EILEEN A. RAKOWER, J.S.C.

**FILED**  
AUG 06 2007  
NEW YORK  
COUNTY CLERK'S OFFICE