

Hankerson v Harris-Camden Term. Equip. Inc

2018 NY Slip Op 32764(U)

October 26, 2018

Supreme Court, New York County

Docket Number: 153054/2018

Judge: Adam Silvera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

-----X

BARBARA HANKERSON,
Plaintiff,

- v -

HARRIS-CAMDEN TERMINAL EQUIPMENT INC, ROBERT
ESPOTI
Defendant.

INDEX NO. 153054/2018
MOTION DATE 10/24/2018
MOTION SEQ. NO. 002

DECISION AND ORDER

-----X

HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that plaintiff’s motion for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability against defendant. Plaintiff’s motion contends that on February 27, 2018, at the intersection of West 57th Street and 9th Avenue in the County, City and State of New York, a vehicle operated by Robert J. Espoti and owned by Harris-Camden Terminal Equipment, turned right from Ninth Avenue onto West 57th Street, struck and seriously injured plaintiff Barbara G. Hankerson, while she was a lawful pedestrian in the crosswalk with the pedestrian signal in her favor. Defendants oppose the motion.

“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” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the

existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). Plaintiffs have made out a prima facie case of negligence, and the burden shifts to defendants to raise a triable issue of fact.

A plaintiff makes a prima facie showing of entitlement to summary judgment by offering evidence that they were a pedestrian within a crosswalk, with the light in their favor, when they were struck by a defendant's vehicle (*Beamud v Gray* 45 AD3d 257 [1st Dep't] [finding that a lawful pedestrian in a crosswalk who was struck by a turning vehicle was entitled to summary judgment as a matter of law on the issue of liability]).

Pursuant to Vehicle and Traffic Law 1130(1), "[w]henver any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection, as established, unless specifically authorized by public authority." Violation of the Vehicle and Traffic Law ("VTL") constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep't 2009]). VTL 1146 places a duty upon motorists to exercise due care in their operation of a motor vehicle and avoid colliding into any pedestrian.

Here, plaintiff avers that she was in the crosswalk, with the pedestrian light in her favor walking her service dog, when defendant attempted to turn and struck plaintiff and her service dog, leading to plaintiff's "serious injury" and the within the crosswalk. In support of her motion

plaintiff attaches the certified NYC Police Accident Report which records that defendant “states he was making right turn and did not see the pedestrian and her dog crossing the street.

Pedestrian states she was walking with cross-light in her favor and that the driver of vehicle 1 (defendant) did make right turn hitting her dog, and pulling her underneath truck” (Mot, Exh B).

Thus, plaintiff has made a prima facie showing of defendant’s negligence. In opposition, defendants claim that “it is not entirely clear at this juncture, upon information and belief, if plaintiff was injured it was due to her failure to release the leash after her dog was impacted, not due to her being impacted by the vehicle” (Aff in Op, ¶ 32).

However, plaintiff has demonstrated that it was a lawful pedestrian in the cross-walk at the time of the accident with the pedestrian signal in her favor. Plaintiff’s walking of her dog does not obviate defendant of their duty of due care in the operation of their vehicle and to avoid colliding into plaintiff. Plaintiff has demonstrated that defendant driver Espoti has violated the VTL.

The Court of Appeals has held that a plaintiff is entitled to partial summary judgment on the issue of a defendant’s liability even if a defendant raises an issue of fact regarding plaintiff’s comparative negligence (*Rodriguez v City of New York*, 31 NY3d 312 [2018]). The issue of a plaintiff’s comparative negligence is addressed and determined only when considering the damages that a defendant owes to a plaintiff (*id.* at 3). Thus, a plaintiff’s motion for summary judgment is appropriate regardless of plaintiff’s potential comparative negligence.

Thus, plaintiff has demonstrated a prima facie showing of defendant’s negligence and defendant has failed to raise an issue of fact. Plaintiff’s motion for summary judgment, on the issue of liability, as against defendants is granted. It appearing to the court that plaintiff is

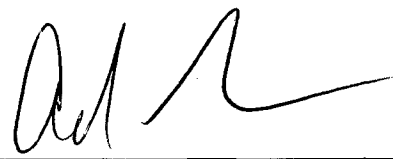
entitled to judgment on liability and that the only triable issues of fact arising on plaintiff's motion for summary judgment relate to the amount of damages to which plaintiff is entitled, it is:

ORDERED that plaintiff's motion for summary judgment is granted on the issue of liability as against defendants; and it is further

ORDERED that all parties appear for a Compliance Conference on December 19, 2018, in room 103 of 80 Centre Street at 9:30AM; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision/Order upon plaintiff with notice of entry.

This constitutes the Decision/Order of the Court.



10/26/2018
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE