

<b>Sau-Kuen Shek v Gachineiro</b>
2018 NY Slip Op 32826(U)
November 5, 2018
Supreme Court, New York County
Docket Number: 151934/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 22

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SAU-KUEN SHEK,

Plaintiff,

- v -

STEFANIE GACHINEIRO, NISSAN-INFINITI, LT.

Defendant.

INDEX NO. 151934/2018

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION AND ORDER**

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that plaintiff, Sau-Kuan Shek’s motion for summary judgment on the issue of liability in favor of plaintiff against defendants and to set this action down for a trial on damages is granted. Plaintiff moves for an order for summary judgment on this issue of liability in this action, which stems from a motor vehicle incident that occurred on April 22, 2017, on East Houston Street at its intersection with Forsyth Street in the County, City, and State of New York when a vehicle owned by defendant, Nissan-Infiniti, L.T., operated by defendant, Stefanie M. Gachineiro backed up against traffic at the intersection, struck and allegedly seriously injured plaintiff, Sau-Kuen Shek, while she was a lawful pedestrian walking in the crosswalk with the light 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]).

A plaintiff makes a prima facie showing of entitlement to summary judgment on the issue of liability 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]). 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. Pursuant to VTL 1211(a) “the driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.”

Here, plaintiff submits an affidavit in which she testified that she waited until the pedestrian light changed to white, before entering the crosswalk, looked left and right before proceeding in the crosswalk where she was ultimately struck by defendants’ vehicle (Aff in Support, ¶¶ 6-8). Further, plaintiff submits a certified police report in which defendant is recorded stating “that the light went from yellow to red when she was past the crosswalk so she let her foot off the brake to back up” (Mot, Exh A). Plaintiff has demonstrated that in backing up into the crosswalk, defendant violated VTL 1146 and VTL 1211(a). Thus, plaintiff has made a prima facie demonstration of defendant’s negligence and the burden shifts to defendant to raise an issue of fact.

In opposition, defendants claim that plaintiff’s motion is insufficient and allege that plaintiff’s translator’s affidavit is defective. Plaintiff does not speak English and has attached an

affidavit in English, an affidavit in Chinese and an affidavit from a translator who avers to have translated the contents of the Affidavit signed by plaintiff, Sau-Kuen Shek. Under CPLR 2101 (b) “each paper served or filed shall be in the English language . . . Where an affidavit or exhibit annexed to a paper served or filed is in a foreign language, it shall be accompanied by an English translation and an affidavit stating his qualifications and that the translation is accurate.”

Here, defendants state that plaintiff’s translator’s affidavit is defective and does not conform with the language requirements of CPLR 2101 (b), as the translator merely states that she is fluent in Chinese and does not specify which dialect(s) of Chinese she is fluent in. Plaintiff’s motion however, attaches plaintiff’s affidavit in English in addition to the Chinese affidavit. Defendants incorrectly interpret CPLR 2101 (b).

The CPLR explicitly states that an affidavit filed in a foreign language must be accompanied by an English translation stating the translators qualifications; however, this motion contains an English affidavit, which pursuant to the CPLR does not necessitate an affidavit stating the translator’s qualifications. The plain language of the 2101 (b) includes such a requirement for foreign language affidavits but does not contain such a requirement under the part of the section pertaining to English affidavits. Thus, this court finds no such defect in plaintiff’s motion papers and absent an issue of fact, plaintiff’s motion for summary judgment 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 January 28, 2019, 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 defendants with notice of entry.

This constitutes the Decision/Order of the Court.

11/5/2018  
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE