

<b>Wanting Mei v Munir</b>
2019 NY Slip Op 30121(U)
January 14, 2019
Supreme Court, New York County
Docket Number: 153578/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 153578/2018

WANTING MEI

MOTION DATE 01/02/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

BILAL MUNIR,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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 Bilal Munir. Plaintiff's motion, which contends that she was crossing in the pedestrian crosswalk, with the crossing light, when defendant's vehicle struck her, has made out a prima facie case of negligence. Plaintiff's motion further establishes that she was not distracted while crossing the street, looked for cars before crossing, and was otherwise free from comparative negligence. Thus, the burden shifts to defendant to raise a triable issue of fact. See Winegrad v New York University Medical Center, 64 NY2d 851, 853 (1985); see also Zuckerman v City of New York, 49 NY2d 557, 560 (1980). Here, defendant proffers only an attorney's affirmation in opposition. The Court of Appeals has made clear that bare allegations or conclusory assertions are insufficient to create genuine, bona fide issues of fact necessary to defeat a motion for summary judgment. See Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223, 231 (1978). Defendant's attorney argues that summary judgment must be denied as discovery is needed. "However, defendant's

failure to raise any factual issues to absolve him of liability or even submit a sworn statement of facts or to credibly explain the failure to do so defeats the need for discovery. Since defendant is the party with knowledge of the factual circumstances as to how...[the accident occurred], discovery would serve no purpose.” *Johnson v Phillips*, 261 AD2d 269 (1<sup>st</sup> Dep’t 1999). As such, plaintiff’s motion for summary judgment is granted as to defendant Bilal Munir’s liability, and defendant Bilal Munir’s affirmative defenses alleging comparative fault are hereby stricken.

As to the portion of plaintiff’s motion seeking to amend the Summons and Complaint to add Uber Technologies, Inc. as a defendant is granted. Pursuant to CPLR 3025(b), “[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.” Leave to amend pleadings is generally freely granted, absent prejudice and surprise resulting from the delay. *See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 (1983); *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 (1<sup>st</sup> Dep’t 2006). To find prejudice, there must be some indication that a party has been hindered in the preparation of his case or prevented from taking some measure in support of his position. *See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 (1<sup>st</sup> Dep’t 2000).

Here, plaintiff seeks to amend the caption by adding Uber Technologies, Inc. as an additional defendant. Although defendant Munir filed opposition, he explicitly stated that his opposition was not to the portion of the instant motion seeking to amend the complaint. Thus, no prejudice is alleged. As such, plaintiff’s motion is granted without opposition.

Accordingly, it is

ORDERED that plaintiff’s motion for summary judgment is granted on the issue of liability as against defendant Bilal Munir; and it is further

ORDERED that defendant Bilal Munir's affirmative defenses alleging comparative fault are hereby stricken; and it is further

ORDERED that plaintiff's motion to amend is granted and the caption in this action is amended to read as follows:

\_\_\_\_\_  
WANTING MEI,

Plaintiff,

-against-

Index No. 153578/18

BILAL MUNIR  
and UBER TECHNOLOGIES, INC.,  
\_\_\_\_\_  
Defendants.

And it is further;

ORDERED that plaintiff shall serve and file the amended summons and complaint upon the additional party, and mail a copy to the other defendant, within 30 days, together with a copy of this order with notice of entry; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint within 20 days from the date of said service; and it is further

ORDERED that, within 14 days of receipt of defendant Uber Technologies, Inc.'s answers, plaintiff shall serve a copy of all prior pleadings and previously exchanged discovery, including all deposition transcripts, if any; and it is further

ORDERED that within 30 days of entry of this order plaintiff shall serve a copy, with notice of entry, upon all parties, the County Clerk (Basement of 60 Centre) and the Clerk of Trial Support (Room 148 of 60 Centre), who shall mark their records to reflect the amendment to the caption; and it is further

ORDERED that the compliance conference currently scheduled for January 16, 2019 at 9:30am is hereby vacated; and it is further

ORDERED that all parties shall appear for a previously scheduled compliance conference on March 18, 2019 at 9:30am, at 80 Centre Street, New York, New York, and parties are ordered to expeditiously complete discovery.

This constitutes the Decision/Order of the Court.

1/14/2019  
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"/>	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