

Qureshi v Cozine

2021 NY Slip Op 31725(U)

May 19, 2021

Supreme Court, Kings County

Docket Number: 510685/2019

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

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ASIM QURESHI,

Plaintiff,

-against-

**MICHAEL L. COZINE, THIS IS IT! PRODUCTIONS, INC.
and PENSKE TRUCK LEASING CO. LP,**

Defendants.

-----X

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of plaintiff's motion for summary judgment

Papers	NYSCEF Doc.
Notice of Motion, Affirmation, and Exhibits Annexed	<u>19-24</u>
Affirmation in Opposition, and Exhibits Annexed	<u>37-43</u>
Affirmation in Reply	<u>35</u>
Stipulation that the court consider 37-43 not 27-33.....	<u>45</u>

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

This is an action for personal injuries arising from a motor vehicle accident. The accident took place on January 10, 2019. Plaintiff claims he was stopped at the curb to discharge his passengers when he was sideswiped by defendant Cozine, who was driving a truck leased by defendant This Is It! Productions, Inc. from defendant Penske Truck Leasing Co., LP. Plaintiff moves for summary judgment on the issue of liability and an order dismissing the affirmative defenses of comparative fault.

Plaintiff supports his motion with an affirmation of counsel, the pleadings, and an affidavit. In his affidavit, he states that he was sideswiped by defendant "around 13:30 am" while he was "parked in the parking lane at the intersection of Battery Place and State

Street” in Manhattan, in order to discharge passengers. He does not state which street he was actually stopped on.

Defendants oppose the motion and provide an affidavit from Michael Cozine, the driver of defendants’ vehicle. He states that he was driving a box truck which was 26 feet long in the course of his employment for This Is It! Productions, Inc. and was in the process of turning right from Battery Place onto State Street when he made contact with plaintiff’s taxi, which was not in a parking lane, claiming there is no parking lane there, but was “stopped in the traffic lane of State Street” two feet from the corner, with its rear “protruding into and partially blocking the one southbound travel lane.” He continues to say that there is no parking lane on this block and that plaintiff did not have his brake lights on or his flashers on, presumably meaning that he did not see him as he started to turn. He says he annexes photos he took at the scene, to show the location of plaintiff’s taxi. He states that he took the photos of plaintiff’s taxi while it was “still in the same position as it was in when it was parked and the contact occurred.” The photos are not annexed, however.

In reply, plaintiff’s attorney states that plaintiff’s taxi, stopped where it should not have been stopped, “merely furnished the condition or occasion for the occurrence of an event and are not one of its causes.” He then tries to interpret a number of court decisions to support this conclusion. He concludes that defendant should not have made the turn if “it could not be made with reasonable safety,” citing VTL § 1163 (a).

The court does not find that plaintiff made a prima facie case for summary judgment with his affidavit. But even if he had, the defendants overcome the motion and raise a triable issue of fact.

A plaintiff’s self-serving affidavit is insufficient to establish his prima facie entitlement to summary judgment as a matter of law (*see TDS Leasing, LLC v Tradito*, 148 AD3d 1079,

1081 [2d Dept 2017], citing *Thorne v Cauldwell Terrace Constr. Corp.*, 63 AD3d 826, 827, 880 NYS2d 357 [2009]; *Griffin v Wilkarm Props.*, 218 AD2d 639, 630 NYS2d 341 [1995]). If there is no police report or other evidence to corroborate the facts alleged, which here includes the location of the accident, a motion for summary judgment should not be made.

Further, an unlawfully parked vehicle can be a proximate cause of a motor vehicle accident and this is not a new or novel interpretation of the law (see *Somersall v NY Tel. Co.*, 52 NY2d 157 [1981]; *Nadella v City of NY*, 161 AD3d 412 [1st Dept 2018]).

In conclusion, the court cannot say that defendant driver was negligent as a matter of law based on the evidence in this record. His affidavit states that he was turning right onto a street that had only one lane for moving traffic and no parking lane, that he was driving a 26-foot truck, that he did not see plaintiff's taxi until he started the turn, that he did not want to cross the double yellow line and move his truck into oncoming traffic, and that he turned as best he could but the rear of his truck contacted the driver's side of the taxi. If defendant's testimony is true, it raises an issue of fact as to whether plaintiff should have foreseen that stopping where he stopped, partially blocking the only lane for moving traffic, would cause an accident.

It is well settled that where there are conflicting witness accounts, summary judgment should not be granted (*Rodriguez v 1585 Broadway Assocs.*, 243 A.D.2d 351, 664 N.Y.S.2d 534 [1st Dept 1997]). It is not the court's role to determine issues of credibility. The court, in *O'Connor by O'Connor v Pecoraro*, 141 AD2d 443, 529 N.Y.S.2d 780 [1st Dept 1988], held that: "owners of improperly parked cars may be held liable . . . depending on the determinations by the trier of fact of the issues of foreseeability and proximate cause unique to the particular case" (*id.* at 443 [where defendant illegally parked his car in front of a store, obstructing the view of plaintiff so that he did not see another vehicle approaching in time to

push his sister out of the way)). Proximate cause and foreseeability are generally issues for a finder of fact and it is not necessary that defendant must have foreseen the precise manner in which the accident happened (*Derdiarian v Felix Contracting Corp.*, 51 NY2d 308, 414 N.E.2d 666, 434 N.Y.S.2d 166 [1980]).

Accordingly, it is **ORDERED** that the plaintiff's motion for summary judgment on the issue of liability is denied.

This constitutes the decision and order of the court.

Dated: May 19, 2021

ENTER:



Hon. Debra Silber, J.S.C.