

De Leon v Kagansky
2021 NY Slip Op 33480(U)
September 30, 2021
Supreme Court, Kings County
Docket Number: Index No. 519198/2019
Judge: Lillian Wan
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17

-----X
IAN REGGIE DE LEON,

Plaintiff,

- against -

Index No. 519198/2019

Motion Date: 7/21/21

Motion Seq. No.: 01

EUGENE KAGANSKY, and "JOHN DOE", intended to be
the operator of a certain motor vehicle,

Defendants.
-----X

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 9-14 and 18-23 were read on this motion for summary judgment.

The plaintiff seeks summary judgment, pursuant to CPLR § 3212, on the issue of liability against defendant Eugene Kagansky, or in the alternative, for an order finding the plaintiff free from comparative fault in the happening of the accident. The defendant opposes the motion, arguing that it is procedurally defective because the plaintiff failed to comply with Uniform Civil Rules for the Supreme Court and County Courts §§ 202.8-g(a) and 202.8-b(c) (hereinafter Uniform Rule).

This action arises from personal injuries sustained by plaintiff Ian Reggie De Leon in a motor vehicle accident that occurred on May 29, 2018 on Grand Street, in the County of Kings, City and State of New York. The plaintiff was operating an electric skateboard when he was struck by a vehicle owned by defendant Eugene Kagansky, and operated by non-party Matthew Kagansky.

The Court denies the plaintiff's summary judgment motion for failure to comply with Uniform Rule § 202.8-g(a). The rule became effective on February 1, 2021, and requires that:

Upon any motion for summary judgment other than a motion made pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

This rule applies to the instant motion, because it was filed on April 26, 2021.

While the Uniform Rule is new, Courts that have addressed a movant's failure to comply with § 202.8-g(a) have held that such an omission is not merely a technical violation, but rather it is a substantive defect, which a Court cannot correct in its own discretion, pursuant to CPLR §§ 2101(f) or 2001. See *Great Wall Medical, P.C. v Hye Suk Kim*, Sup Ct, NY County, August 24,

2021, Hom, J. index No. 150669/2020. In *Amos Financial LLC v Crapanzano*, ---NYS3d---, 2021 NY Slip Op 21209 (Sup Ct, Rockland County 2021), the trial court held that :

...a summary judgment movant's total failure to submit a Uniform Rule 202.8-g Statement of Material Facts constitutes a violation that is neither merely technical nor without prejudice. Unlike minor technical 'glitches,' irregularities and harmless pleading errors that courts have substantial discretion to correct nunc pro tunc under CPLR 2101(f) and/or CPLR 2001... the total absence of a Uniform Rule 202.8-g Statement of Material Facts constitutes a substantive defect in a motion for summary judgment.

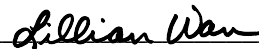
Id. at *3. See also *Reus v ETC Housing Corporation*, 72 Misc.3d 479 (Sup Ct, Clinton County 2021).

Accordingly, it is hereby

ORDERED, that the plaintiff's motion for summary judgment is denied without prejudice to timely renewal upon proper papers in accordance with Uniform Rule § 202.8-g(a).

This constitutes the decision and order of the Court.

Dated: September 30, 2021



HON. LILLIAN WAN, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020.