

Campbell v Ahmad
2022 NY Slip Op 30134(U)
January 11, 2022
Supreme Court, Kings County
Docket Number: Index No.: 524287/2020
Judge: Peter P. Sweeney
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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 KINGS, PART 73

Index No.: 524287/2020
Motion Date: 11-15-21
Mot. Seq. No.: 1, 2

-----X
JASON G. CAMPBELL,

Plaintiff,

-against-

DECISION/ORDER

SAEED AHMAD, LYFT, INC. and JOANNE K.
LAYNE,

Defendants.

-----X

2022 JAN 14 AM 9: 14
KINGS COUNTY CLERK
FILED

Upon the following e-filed documents, listed by NYSCEF as item numbers 17-29, ~~32~~36, 39-56, the motions are decided as follows:

In this action to recover damages for personal injuries, the plaintiff moves for an order: (1) pursuant to CPLR § 3212 granting him summary judgment on the issue of liability against the defendant SAEED AHMAD; and 2) pursuant to CPLR §3211(b), striking the affirmative defenses of culpable conduct, comparative negligence, failure to wear a seatbelt, and assumption of the risk (**Mot. Seq. # 1**). The defendant JOANNE K. LAYNE cross-moves for an order granting her summary judgment pursuant to CPLR §3212 dismissing the complaint and any and all cross claims against her (**Mot. Seq. # 2**). The motion and cross motion are consolidated for disposition.

In support of his motion, the plaintiff submitted, among other things, his own affidavit and the affidavit of Saeed Ahmad. Plaintiff stated in his affidavit that on November 12, 2019, at approximately 11:30 p.m., he was a seat belted passenger in a Lyft that was owned and operated by defendant Saeed Ahmad when he was involved in an automobile accident on Shore Parkway near its intersection with Rockaway Parkway, in Brooklyn, New York. He stated that just prior to the accident, the Lyft driver was in the right lane, which was a right turn only lane, and was stopped for a red light at the intersection. He maintained that after the light turned green, the Lyft driver, instead of making a right turn, moved straight ahead at which time he felt a heavy impact to the driver's side of the Lyft vehicle towards the back.

Defendant Ahmad stated in his affidavit that Shore Parkway in the area of the accident was a one-way roadway with three lanes for moving traffic and no parking lanes which

001 - XMG
002 - XMG

accommodated westbound traffic. He maintained that at the intersection, the left lane of Shore Parkway was for left turns only, that drivers traveling in the middle lane could either go straight or make a right turn, and that the right lane was for right turns only. He stated that just prior to the accident, he was traveling in the right lane and about to turn right onto Rockaway Parkway when his passenger, the plaintiff herein, told him at the last second to go straight. He proceeded to go straight when a vehicle in the middle lane attempted to turn right onto Rockaway Parkway. His passenger side of the other vehicle wound up coming colliding with the rear drivers' side of his vehicle.

In support of the cross-motion, defendant Joanne Layne submitted an affidavit confirming that the accident occurred in the intersection of Shore Parkway and Rockaway Parkway in Brooklyn, NY. She stated that at the time of the accident, she was traveling on Shore Parkway towards Rockaway Parkway. Her description of Shore Parkway in that area was identical to the description given by the plaintiff and defendant Ahmad. She maintained that just prior to the accident, she was travelling in the middle lane which allows vehicles to go straight or make a right turn. She maintained that when she reached the intersection, the light was green, and co-defendant's vehicle was stopped in the right lane. She began to execute a right turn when suddenly and without warning, co-defendant's drove straight instead of making the required right turn causing the accident. She immediately applied pressure to her brakes but could not stop in time to avoid colliding with co-defendant's vehicle.

That branch of plaintiff's motion for summary judgment against defendant Ahmad on the issue of liability is **GRANTED**. Vehicle & Traffic Law § 1128 provides:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Here, the plaintiff established his prima facie entitlement to judgment as a matter of law by demonstrating that defendant Ahmad violated Vehicle and Traffic Law § 1128(a) by moving out of the right lane for right turns only and moving into the middle lane in which drivers could

make a right turn or proceed straight (*see Freder v. Costello Indus., Inc.*, 162 A.D.3d 984, 987, 80 N.Y.S.3d 371, 375; *Reyes-Diaz v. Quest Diagnostic Inc.*, 123 A.D.3d 790, 999 N.Y.S.2d 98; *Gluck v. New York City Tr. Auth.*, 118 A.D.3d 667, 668–669, 987 N.Y.S.2d 89).

That branch of plaintiff's motion for an order striking the defendant Ahmad's affirmative defenses of culpable conduct, comparative negligence, failure to wear a seatbelt, and assumption of the risk is **GRANTED** solely to the extent that defendant Ahmad's seatbelt defense is stricken. The plaintiff stated in his affidavit that he was wearing a seat belt at the time of the accident. Defendant Ahmad failed to raise a triable issue of fact. With respect to the remaining defenses, the statements in defendant Ahmad's affidavit that the plaintiff told him to continue traveling straight moments before the accident raises triable issue of fact as to defendant Ahmad's affirmative defenses of culpable conduct, comparative negligence and assumption of the risk.

Defendant Layne's motion for summary judgment dismissing plaintiff's complaint insofar as asserted against her and all cross claims is also **GRANTED**. Defendant Layne established that she was not negligent with respect to the happening of the accident by submitting admissible proof that while she was lawfully traveling within her lane of travel and making a permitted right turn, the vehicle operated by defendant Ahmad suddenly and without drove into her lane of travel. Defendant Ahmad, the only party that opposed the motion, did not raise a triable issue of fact.

Accordingly, it is hereby

ORDRED that plaintiff's motion for summary judgment on the issue of liability against defendant Ahmad is **GRANTED**; it is further

ORDRED that plaintiff's motion to dismiss defendant Ahmad's affirmative defenses is **GRANTED** solely to the extent that the defendant Ahmad's seat belt defense is stricken; and it is further

ORDERED that defendant Layne's motion for summary judgment dismissing plaintiff's complaint insofar as asserted against her and all cross-claims is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: January 11, 2022

PPS

PETER P. SWEENEY, J.S.C.

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

KINGS COUNTY CLERK
FILED
2022 JAN 14 AM 9:16