

Singh v Hana Express Cab Corp.

2022 NY Slip Op 30829(U)

March 4, 2022

Supreme Court, Kings County

Docket Number: Index No. 516291/2019

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 4th day of March, 2022.

PRESENT:

HON. CARL J. LANDICINO,
Justice.

-----X
ROHAN SINGH,

Plaintiff,

-against-

HANA EXPRESS CAB CORP., MOUSSA CISSE
and ALEXANDER GUILDER

Defendants.

-----X
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed	35-46,
Opposing Affidavits (Affirmations).....	47-49,
Reply Affidavits (Affirmations)	51

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After a review of the papers and oral argument, the Court finds as follows:

The instant action concerns a claim for personal injuries arising from a motor vehicle accident that allegedly occurred on May 31, 2019. The Plaintiff, Rohan Singh (hereinafter the "Plaintiff"), alleges that he was riding his bicycle on West 24th Street in Manhattan when the rear passenger door of the taxi operated by Defendant Moussa Cisse and owned by Defendant Hana Express Cab Corp. (hereinafter referred to as "Hana Express") was opened by a passenger, Defendant Alexander Guilder (hereinafter "Defendant Guilder"), and struck the Plaintiff.

The Plaintiff now moves (motions sequence #2) for an order pursuant to CPLR 3212 granting him summary judgment on the issue of liability finding Defendants negligent and the sole

proximate cause of the accident. The Plaintiff contends that summary judgment should be granted on the issue of liability because the Plaintiff was not negligent as a matter of law. Specifically, the Plaintiff contends that the Defendants were negligent in as much as Defendant Guilder exited the taxi at the location at issue and that Defendant Guilder opened the door of the taxi when it was unsafe to do so. In support of his motion, the Plaintiff relies on his own deposition, the deposition of Defendant Guilder and a certified Police Accident Report. The Plaintiff further indicates that since Defendants Cisse and Hana Express did not appear for depositions, they are “precluded from testifying at trial or providing an affidavit in response to any dispositive motion.”

Both Hana Express and Defendant Guilder oppose the motion. The Defendants contend that the motion should be denied as there are issues of fact regarding the Plaintiff’s culpable conduct. Specifically, Defendant Guilder argues that he was not negligent and points to his own deposition testimony wherein he stated that he did look prior to opening the door and that in doing so he did take precautions to avoid the accident. Defendant Guilder also points to the Plaintiff’s deposition wherein he testified that he had consumed alcohol shortly before riding his bicycle.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it “should only be employed when there is no doubt as to the absence of triable issues of material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]. “In determining a motion for

summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party.” *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994]. However, “[a] plaintiff is no longer required to show freedom from comparative fault in establishing his or her *prima facie* case...” if they can show “...that the defendant's negligence was a proximate cause of the alleged injuries.” *Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034, 83 N.Y.S.3d 74, 75 [2d Dept 2018]; *Rodriguez v. City of New York*, 31 N.Y.3d 312, 320, 101 N.E.3d 366, 371 [2018].

Turning to the merits of the instant motion, the Court finds that the Plaintiff has failed to meet his *prima facie* burden that the Defendants were negligent. “A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries.” *Ramirez v. Wangdu*, 195 A.D.3d 646, 646, 144 N.Y.S.3d 630, 631 [2d Dept 2021]. In support of his application, the Plaintiff relies on his deposition, his

affidavit, the deposition of Defendant Guilder and a Police Accident Report. As an initial matter, the statements made in the Police Accident are inadmissible given that, although certified, the report does not contain an admission or other admissible material fact. *See Yassin v. Blackman*, 188 AD3d 62, 64, 131 N.Y.S.3d 53, 55 [2d Dept 2020].

The Plaintiff's testimony does not provide sufficient evidence that the Defendants were negligent. During his deposition, the Plaintiff stated that "[o]n May 31, 2019 at approximately 7:30p.m. I was riding my bicycle Eastbound on West 24th Street in the vicinity of 101 W.24th Street in Manhattan when I saw a yellow taxi (defendant's Hana Express & Cisse's vehicle) one or two car-lengths ahead of me in the center of the street on W. 24th Street, stopped in traffic for a red light ahead at the intersection with 6th Avenue." The Plaintiff also stated that "I was riding down the right side of the street with ample space between parked vehicles on my right and traffic to my left." The Plaintiff also stated that "[a]s I was passing the yellow taxi, the rear passenger-side door opened into me suddenly and without warning. I was knocked off my bicycle and to the ground as a result." (See Plaintiff's Motion, Exhibit I, Paragraphs 2, 3, 4). When asked in his deposition to describe West 24th Street, the Plaintiff stated "[g]enerally, at that time, there was one lane of cars travelling." When asked to further describe the street, the Plaintiff stated that "[t]here were cars parked on both sides of the street." When asked if there was a bicycle lane the Plaintiff answered "[n]o." (See Plaintiff's Motion, Exhibit D, Pages 16-17).

Accordingly, there has been no clear showing of a violation of VTL §1214 by the Defendant's passenger, which provides as follows:

"VTL §1214 - Opening and Closing Vehicle Doors. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers."

VTL §1214, involves situations where a car door is opened on the side available to “moving traffic”, and not when a car door is opened on the side not adjacent to a vehicular lane. In *Rincon v. Renaud*, the Court found that the driver was negligent and had violated VTL §1214 when she opened the “driver’s side door to exit the vehicle, and the door came into contact with the plaintiff’s bicycle.” *Rincon v. Renaud*, 186 A.D.3d 1551, 131 N.Y.S.3d 75, 76 [2d Dept 2020]. In *Gonzalez v. O Tembelis Trans., Inc.* the Court found that “Defendants established their *prima facie* entitlement to judgment as a matter of law by showing that plaintiff violated Vehicle and Traffic Law 1214 by opening the door of the taxi cab in which he was a passenger into the side of the passing bus driven by defendant Solis after the front of the bus had passed.” *Gonzalez v. O Tembelis Trans, Inc.*, 185 AD3d 434, 435, 124 N.Y.S.3d 779, 780 [2d Dept 2020]. In the instant proceeding, the door was not opened on the side of available to a moving traffic lane as generally understood in these and other cases. *See also Persaud v. Hub Truck Rental Corp.*, 170 A.D.3d 907, 908, 96 N.Y.S.3d 99, 101 [2d Dept 2019]; *Abbas v. Salavel*, 73 A.D.3d 1100, 1101, 900 N.Y.S.2d 893, 894 [2d Dept 2010]; *Montesinos v. Cote*, 46 A.D.3d 774, 848 N.Y.S.2d 329, 330 [2d Dept 2007].

Moreover, the testimony of Defendant Guilder also fails to support Plaintiff’s contention that the Defendants were negligent. Defendant Guilder, who when asked how much time elapsed between him opening the door and the collision, stated “[i]t was very quick. It was probably within seconds.” Defendant Guilder also stated that “I looked over my shoulder to make sure that it was okay to exit and I opened the door and that was when the collision happened.” When asked how long it was from when he looked to when he opened the door he stated “A few seconds; not long.” When asked whether he saw the Plaintiff prior to the collision, Defendant Guilder stated “I did not, no.” (See Plaintiff’s Motion, Exhibit E, Pages 16-17). The Court finds that this testimony,

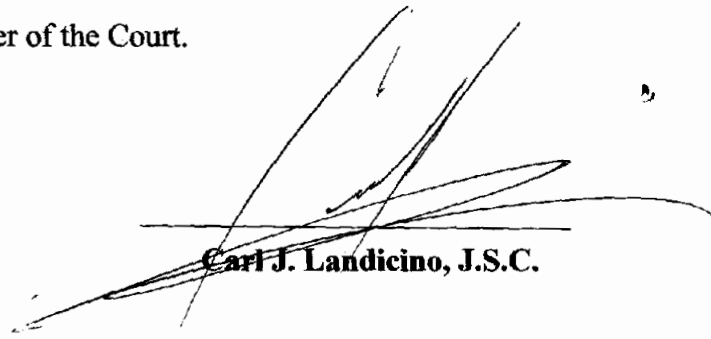
taken together, is insufficient for the Plaintiff to meet his burden that the Defendants were a proximate cause of the collision at issue. A review of this evidence in a light most favorable to a nonmoving parties shows that “the plaintiff failed to eliminate triable issues of fact as to whether the defendant was negligent and, if so, whether any such negligence caused or contributed to the accident.” *Flores v. Rubenstein*, 175 AD3d 1490, 1491, 109 N.Y.S.3d 390, 392 [2d Dept 2019]. “Since the plaintiff failed to meet his initial burden as the movant, it is not necessary to review the sufficiency of the defendant's opposition papers.” *Ramirez v. Wangdu*, 195 A.D.3d 646, 647, 144 N.Y.S.3d 630, 631 [2d Dept 2021]. Accordingly, the motion by the Plaintiff is denied.

Based upon the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion for summary judgment on the issue of liability (Motion Seq. #2) is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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