

Budhna v Mohammed
2022 NY Slip Op 32371(U)
July 14, 2022
Supreme Court, Kings County
Docket Number: Index No. 525054/2019
Judge: Ingrid Joseph
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At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14th day July 2022.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MOHAMAD BUDHNA,

Plaintiff,

- against -

Index No. 525054/2019

IMRAN MOHAMMED, MONDELEZ
GLOBAL, LLC and MONDELEZ
INTERNATIONAL, INC.,

Defendants.
-----X

The following e-filed papers considered herein:

NYSCEF E-filed docs

Notice of Motion/Cross Motion/Affidavit/Affirmation in Support Exhibits Annexed.....	60 - 69; 73 - 88
Opposition.....	89 - 91; 96 - 97
Reply.....	92

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In this matter, plaintiff, Mohamad Budhna (“plaintiff”), moves (Motion Seq. 4) pursuant to CPLR § 3212 for partial summary judgment on the issue of liability dismissing the First and Second Affirmative Defenses asserted by defendant, Imran Mohammed (referred to interchangeably as “defendant” or “defendant Mohammed”). Defendants, Mondelez Global, LLC and Mondelez International, Inc. (“Mondelez”) cross move (Motion Seq. 5) for an order pursuant to Section 202.21 of the Uniform Civil Rules, vacating plaintiff’s note of issue and striking the instant matter from the trial calendar, or, in the alternative, severing all of plaintiff’s claims against Mondelez pursuant to CPLR §

603.

Plaintiff commenced this action by the filing of a Summons and Verified Complaint on November 15, 2019, to recover damages for the injuries he allegedly sustained on February 14, 2019, when the motor vehicle driven by defendant Mohammed struck the passenger side of plaintiff's vehicle. On June 7, 2021, plaintiff moved by notice of motion to amend the verified complaint to add the Mondelez defendants. This court granted such relief by order dated September 17, 2021. In the interim, plaintiff filed the note of issue, on August 13, 2021, representing that all discovery was complete, then effectuated service of the Summons and Amended Verified Complaint upon the Mondelez defendants on or about September 29, 2021. Plaintiff filed the instant motion on October 12, 2021, the Mondelez defendants interposed their Answer on October 27, 2021, then cross moved for the aforementioned relief on November 19, 2021.

In support of the motion, plaintiff argues that he is entitled to summary judgment as a matter of law, dismissing defendant Mohammed's First Affirmative Defense, alleging plaintiff's culpable conduct caused or contributed to the accident, and Second Affirmative Defense, for failure to utilize a seatbelt. Plaintiff alleges that defendant Mohammed, after he exited a parking space, struck the plaintiff's vehicle, which was stopped at a red light. Plaintiff annexed transcripts of the deposition testimony given by him and defendant Mohammed to support these assertions. Plaintiff also points out that defendant Mohammed's answer is stricken pursuant to an order dated March 12, 2021.

Summary judgment is a drastic remedy and should be granted only when it is clear that no triable issues of fact exist (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). The moving party bears the burden of showing its prima facie entitlement to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material issue of fact (*Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]). When a prima facie showing has been made, the burden shifts to the opposing party to produce sufficient evidentiary proof to establish the existence of material factual issues (*Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557 [1980].)

In this case, the court finds that the plaintiff has established, prima facie, that defendant Mohammed was the sole proximate cause of the subject accident and plaintiff was free from negligence. At his deposition, plaintiff stated that he first saw the defendants' vehicle exiting a parking space after plaintiff came to a stop at the red light (Plaintiff's deposition, p. 72, Line 16). Plaintiff further testified that he was wearing a seatbelt when the accident occurred (Plaintiff's deposition, p. 35 - 36, Line 18). Defendant Mohammed, during his deposition, failed to raise a material issue of fact regarding plaintiff's alleged culpable conduct, or contributory negligence, and failure to wear a seatbelt. In fact, defendant Mohammed corroborated plaintiff's averments by answering in the affirmative when asked whether plaintiff's vehicle was stopped at a red light when he first saw plaintiff's vehicle. Defendant Mohammed also stated that the second time he saw plaintiff's vehicle was simultaneous with the impact. Thus, defendant's own testimony at the very least, implicates Sections 1162 and 1143 of the

Vehicle Traffic Law, which set forth the rules for starting a parked vehicle and entering a vehicle upon a roadway. Further, the defendant's answer is stricken by court order.

The court will now address the Mondelez defendants' cross motion to vacate the note of issue, or, alternatively, to sever plaintiff's claims. The court notes that vicarious liability of the Mondelez defendants is in issue, since defendant Mohammed testified during his deposition that he was working in the course of his employment when the accident occurred. Since there will necessarily be common factual and legal issues involved, and the interests of judicial economy and consistency of verdicts will be served, the court finds that severance is inappropriate in this action (*Zili v City of New York*, 105 AD3d 949 [2d Dept 2013]).

Pursuant to the Uniform Rules for Trial Courts (22 NYCRR) § 202.21, a note of issue must be accompanied by a certificate of readiness, which must state, among other things, that there are no outstanding requests for discovery and the case is ready for trial (see 22 NYCRR § 202.21[a], [b]; *Furrukh v. Forest Hills Hosp.*, 107 AD3d 668, 669 [2d Dept 2013]). Plaintiff's certificate of readiness provides that all pleadings were served and discovery was complete. As previously explained, plaintiff obtained leave of court to amend his Verified Complaint and add the Mondelez defendants as parties after filing the note of issue. Consequently, the court finds that the representations made in the certificate of readiness are incorrect, as all discovery is not complete and the matter is not ready for trial.

Accordingly, it is hereby

ORDERED, that plaintiff's motion (Motion Seq. 4) for partial summary judgment, dismissing the First and Second Affirmative Defenses of defendant Imran Mohammed, is granted, and it is further

ORDERED, that the cross motion (Motion Seq. 5) of defendants Mondelez Global, LLC and Mondelez International, Inc. is granted to the extent that plaintiff's note of issue, filed on August 13, 2021, is hereby vacated, and it is further

ORDERED, that the clerk shall place this matter on the Compliance Conference Calendar.

This constitutes the decision and order of the court.

ENTER



HON. INGRID JOSEPH, J. S. C.

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