

Do Sok So v Idris

2023 NY Slip Op 32773(U)

July 25, 2023

Supreme Court, Queens County

Docket Number: Index No. 708305/2018

Judge: Maurice E. Muir

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Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice

DO SOK SO AND JOSHUA SO,

IAS Part - 42

Plaintiffs,

Index No. 708305/2018

-against-

Motion Date: 6/2/22

BADWAY IDRIS, ASLAM RATHORE, AND
MOHAMMAD S. UDDIN,

Motion Cal. No. 38

Motion Seq. No. 6

Defendants.



The following electronically filed (“EF”) documents read on this motion by Joshua So (“Mr. Joshua”) for order pursuant to CPLR § 3212 granting summary judgment in favor of plaintiff on the counterclaim, Joshua So dismissing the counterclaim and all cross claims, on the grounds that there are no material questions of law or fact on the issue of liability. Moreover, by Do Sok So (“Mr. Sok”) and Joshua So (“Mr. Joshua”) (collectively, the “plaintiffs”) cross move for an order granting summary judgment pursuant to CPLR § 3212 in favor of Plaintiffs Do Sok So and Joshua So on the counterclaim Joshua So as well as Plaintiff, Do Sok So, bear no liability for the subject accident. Additionally, Badway Idris (“Mr. Idris”) cross moves for an order granting him summary judgment on liability pursuant to CPLR § 3212, dismissing all cross-claims together with such other and further relief as to this Court may deem just and proper.

Papers

Numbered

Plaintiff on the Counterclaim Notice of Motion-Affirmation-Exhibits.....	EF 093 - 103
Plaintiffs’ Notice of Cross Motion-Affirmation-Exhibits.....	EF113-114
Affirmation in Opposition-Exhibits.....	EF 115 - 117
Badway Idris Notice of Cross Motion-Affirmation-Exhibits.....	EF 125 - 135
Affirmation in Opposition-Exhibits.....	EF 136 - 137
Affirmation in Reply-Exhibits.....	EF 141 - 142
Affirmation in Opposition-Exhibits.....	EF 143 - 144

Upon the foregoing papers it is ordered that the motion and cross-motions are combined herein for disposition, and determined as follows:

This is an action to recover damages for personal injuries the plaintiffs allegedly sustained in motor vehicle accident on April 2, 2016 -- on Water Street at or near its intersection with Maiden Lane, in the county, city and state of New York (“subject accident”). As a result, on May 30, 2018, the plaintiffs commenced the instant action against Badway Idris (“Mr. Idris”), Aslam Rathore (“Mr. Rathore”) and Mohammad Uddin (“Mr. Uddin”); and on June 28, 2018, issue was joined.

In support of the main motion, Mr. Jhoshua testified that he had a right of way and had a green traffic light and was completely in his lane while proceeding on southbound Water Street intersecting with Maiden Lane when Mr. Idris was hit by a yellow cab, operated by Mr. Rathore, and then pushed into his vehicle. Moreover, Mr. Idris testified that on the date of the accident, he was driving on Water Street, which is a two-way street with two lanes in each direction, separated by a double yellow line. As he approached the intersection with Maiden Lane, his traffic light was green; and he saw the plaintiffs’ vehicle traveling on Water Street in the opposite direction. When he was midway through the intersection, he was T-boned on the right side by Mr. Rathore, who pushed his vehicle across the double yellow line and into the plaintiffs’ vehicle. Here, the court finds that the plaintiffs established their *prima facie* entitlement to judgment as a matter of law by demonstrating that they were not at fault in the happening of the subject accident. (*see Rodriguez v. City of New York*, 31 NY3d 312 [2018]; *Sooklall v. Morisseav-LaFague*, 185 AD3d 1079 [2d Dept 2020]; *Merino v. Tessel*, 166 AD3d 760 [2d Dept 2018]).

Furthermore, Mr. Sok established his *prima facie* entitlement to judgment as a matter of law. It is well settled law that “[t]he right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers. (*Romain v. City of New York*, 177 AD3d 590 [2d Dept 2019], citing CPLR § 3212(g); *Jung v. Glover*, 169 AD3d 782 [2d Dept 2019]; *Phillips v. D&D Carting Co., Inc.*, 136 AD3d 18 [2d Dept 2015]; *Anzel v. Pistorinoi*, 105 AD3d 784 [2d Dept 2013]). Here, Mr. SoK demonstrated his *prima facie* entitlement to judgment as a matter of law on the issue of liability against the defendants by establishing that Mr. Rathore violated Vehicle and Traffic Law §1110(a) when he entered an

intersection against a red traffic light and struck Mr. Idris' motor vehicle. (*Wynter v. City of New York*, 173 AD3d 1122, 1122 [2d Dept 2019]; *Kirby v. Lett*, 208 AD3d 1174 [2d Dept 2022]; *Balladares v. City of New York*, 177 AD3d 942 [2d Dept 2019]; *Whitehead v. David Rosen Bakery Suppliers, Inc.*, 208 AD3d 533 [2d Dept 2022]). Neither Mr. Idris nor Mr. Rathore submitted an affidavit establishing that Mr. Sok engaged in any culpable conduct, which contributed to the subject accident. (see *Phillips v. D&D Carting Co., Inc.*, 136 AD3d 18 [2d Dept 2015]; *Lopez v. Suggs*, 186 AD3d 589 [2d Dept 2020]).

Now the court will address Mr. Idris' cross motion. It is well settled law that "[a] driver who enters an intersection against a red traffic light in violation of Vehicle and Traffic Law § 1110 (a) is negligent as a matter of law" (*Wynter v. City of New York*, 173 AD3d 1122, 1122 [2d Dept 2019]; *Kirby v. Lett*, 208 AD3d 1174 [2d Dept 2022]). "The operator of a vehicle with the right-of-way is entitled to assume that others will obey the traffic laws requiring them to yield" (*Pei Ru Guo v. Efkarpidis*, 185 AD3d 949, 951 [2d Dept 2020]; see *Mu-Jin Chen v. Cardenia*, 138 AD3d 1126, 1127 [2d Dept 2016], but "'a driver traveling with the right-of-way may nevertheless be found to have contributed to the happening of the accident if he or she did not use reasonable care to avoid the accident'" (*Shuofang Yang v. Sanacore*, 202 AD3d 1120, 1122 [2d Dept 2022], quoting *Arias v. Tiao*, 123 AD3d 857, 858 [2d Dept 2014]; see *Fergile v. Payne*, 202 AD3d 928, 930 [2d Dept 2022]). Nevertheless, "'a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision'" (*Elusma v Jackson*, 186 AD3d at 1327, quoting *Foley v. Santucci*, 135 AD3d 813, 814 [2d Dept 2016]). Here, Mr. Idris established his prima facie entitlement to judgment as a matter of law by submitting transcripts of the parties' deposition testimony, which demonstrated that he was proceeding through the intersection with a green traffic light when Mr. Rathore entered the intersection against a red traffic light, and that Mr. Rathore's conduct was the sole proximate cause of the accident (see *Napolitano v. Sanderson*, 167 AD3d 1024, 1025 [2d Dept 2018]; *Joaquin v. Franco*, 116 AD3d 1009, 1009-1010 [2d Dept 2014]). Mr. Idris, who had the right-of-way, was entitled to assume that Mr. Rathore would obey the traffic law requiring him to yield, and the defendants demonstrated, prima facie, that Mr. Idris was not negligent for failing to avoid the collision since he had only one second to react to Mr. Rathore's vehicle (see *Jeong Sook Lee-Son v. Doe*, 170 AD3d 973, 974 [2d Dept 2019]; *Foley v. Santucci*, 135 AD3d at 814; *Joaquin v. Franco*, 116 AD3d at 1010).

Accordingly, it is hereby

ORDERED that Joshua So' motion, pursuant to CPLR § 3212, for summary judgment, dismissing the counterclaim and all cross claims, is granted; and it is further,

ORDERED that plaintiffs' cross motion for summary judgment, on the issue of liability, pursuant to CPLR § 3212, is granted; and it is further,

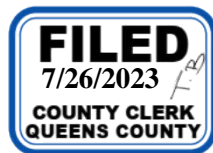
ORDERED that Defendant Badway Idris' cross motion for summary judgment, on the issue of liability, pursuant to CPLR § 3212, is granted; and it is further;

ORDERED that the complaint and all cross claims against Defendant Badway Idris are dismissed with prejudice; and it is further,

ORDERED that the plaintiffs shall serve a copy of this decision and order with notice of entry upon the parties on or before August 30, 2023.

The foregoing constitutes the Decision and Order of the court.

Dated: July 25, 2023
Long Island City, NY



Maurice E. Muir
MAURICE E. MUIR, J.S.C.