

**Beka v Cadmen**

2023 NY Slip Op 33897(U)

October 27, 2023

Supreme Court, Kings County

Docket Number: Index No. 528322/2021

Judge: Francois A. Rivera

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At an IAS Term, Part 52 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 27<sup>th</sup> day of October 2023

HONORABLE FRANCOIS A. RIVERA  
-----X  
BESIM BEKA,

Plaintiff,

Index No. 528322/2021

-against-

**DECISION & ORDER**

BRANDON CADMEN and FAEDM  
TRANSPORTATION CORP.,

Defendants,  
-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on February 15, 2023, under motion sequence number one, by plaintiff Besim Beka for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against Brandon Cadmen and Faedm Transportation Corp. (hereinafter the defendants). The motion is opposed.

- Notice of Motion
- Statement of material facts
- Affirmation in support
  - Exhibits A-E
- Affirmation in opposition
- Defendant's affidavit in opposition
- Response to statement of material facts

## BACKGROUND

On November 4, 2021, the plaintiff commenced this action by filing a summons and verified complaint with the Kings County Clerk's office. On December 28, 2021, the defendants joined issue by interposing and filing a joint answer.

The plaintiff's verified complaint and deposition testimony allege the following salient facts. On July 21, 2021, plaintiff was a pedestrian crossing the street at the crosswalk at the intersection of 41<sup>st</sup> Street and 7th Avenue in Brooklyn, New York with the traffic light in plaintiff's favor. At the same time, date and place, defendant Brandon Camden was operating a motor vehicle owned by defendant Faedm Transportation, bearing license plate number T675537C, New York. Defendant Camden did not see plaintiff, initially, as plaintiff was crossing in the crosswalk. Defendant Camden made a statement to police, admitting that he hit a person as he was making a turn. He was issued a summons after this admission for failing to yield to pedestrians. As a result of the incident, plaintiff sustained serious injuries resulting in fractures to the left knee and a tear to the right shoulder requiring surgery.

## LAW AND APPLICATION

A plaintiff moving for summary judgment on the issue of liability in a negligence action must establish, prima facie showing that the defendant breached a duty owed to the plaintiff and the defendant's negligent actions were a proximate cause of the alleged injuries (*Hall v Powell*, 183 AD3d 576 [2nd Dept 2020]). A motion for summary judgment shall be supported by an affidavit, by a copy of the pleadings and by other available proof, such as, depositions and written admissions (CPLR 3212 (b); *Poon v*

*Nisanov*, 162 AD3d 804 [2nd Dept 2018]; *Marriot v Jackson*, 67 Misc3d 1211(A) [Kings Supreme Court 2020]).

In support of their motion, the plaintiff submitted the deposition transcript of defendant Camden and the plaintiff's own deposition. The sworn testimony established that the defendant Camden struck the plaintiff while Camden was making a turn at the intersection of 41st Street and 7th Avenue in Brooklyn, New York. At the same time, the plaintiff was crossing the street in the crosswalk with the light in plaintiff's favor.

To be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing ... the absence of his or her own comparative fault (*Rodriguez v. City of New York*, 31 N.Y.3d 312 at 324–325 [2108]). A pedestrian who has the right of way is entitled to anticipate that motorists will obey the traffic laws that require them to yield (*Ahmed v. Garzon*, 210 A.D.3d 832, 833 [2<sup>nd</sup> Dept 2022]).

Here, the plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability. The evidence submitted by the plaintiff established that the plaintiff entering the crosswalk within which plaintiff was walking, with the pedestrian signal in her favor, when defendant Camden failed to yield the right-of-way and struck the plaintiff with the motor vehicle he was operating while making a turn (see Vehicle and Traffic Law §§ 1111[a][1]; 1112[a]; *Ahmed v. Garzon*, 210 A.D.3d 832, 833 [2<sup>nd</sup> Dept 2022]).

The defendant opposition papers which included Camden's deposition transcript failed to raise a triable issue of fact.

**CONCLUSION**

The motion by Besim Bekafor an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue liability as against defendants Brandon Cadmen and Faedm Transportation Corp is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:

*Francois A. Rivera*

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J.S.C.

HON. FRANCOIS A. RIVERA  
J.S.C.