

Byrnes v Kaur

2024 NY Slip Op 30951(U)

March 19, 2024

Supreme Court, New York County

Docket Number: Index No. 153572/2021

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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ALEXANDER BYRNES,

Plaintiff,

- v -

GURMEET KAUR, KULDIP SINGH, AMRITPAL SINGH, and
LION HEART GROUP, INC.,

Defendants.

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INDEX NO. 153572/2021

MOTION DATE 10/26/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 97, 98, 99, 100, 101, 102, 103, 104, 106

were read on this motion to/for

JUDGMENT - SUMMARY

This personal injury action arises out of an accident that occurred on November 28, 2020, when the motor vehicle registered to defendant Gurmeet Kaur (Kaur) was involved in a collision with plaintiff Alexander Byrnes, a pedestrian. Defendant Lion Heart Group, Inc. (LHG) moves and defendant Kuldip Singh (Kuldip) cross-moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and the cross-claims asserted against them.

Background

According to plaintiff's verified bill of particulars, the accident occurred at approximately 8 p.m. in the roadway near 333 West 23rd Street, New York, New York (NY St Cts Elec Filing [NYSCEF] Doc No. 64, Sarah Allison [Allison] affirmation, exhibit A, ¶¶ 2-3). Plaintiff testified at his deposition that the accident occurred in the middle of the block on West 23rd Street between Eighth and Ninth Avenues (NYSCEF Doc No. 74, Allison affirmation, exhibit K, plaintiff tr at 10-12). Plaintiff looked both ways for moving traffic before he stepped off the curb on the south side of the street and began walking north (*id.* at 10 and 12). He did not see the vehicle involved in

the accident at that time (*id.* at 13). Plaintiff testified that he was walking north across the eastbound lane for moving traffic when he “heard the screeching of tires, and then saw lights ... kind of panning over me” (*id.* at 13) and a vehicle traveling towards him (*id.* at 15). Plaintiff could not estimate its speed, nor could he recall the distance that separated them (*id.* at 15-17). Plaintiff attempted to “[j]ump[] out of the way” but his body came into contact with the vehicle’s front bumper (*id.* at 17-18).

Nonparty Michael Williams (Williams), who at the time of the accident was a police officer with the New York City Police Department (NYPD), responded to the scene and prepared a police accident report (NYSCEF Doc No. 99, Justine B. Uy [Uy] affirmation, exhibit B, Williams tr at 7, 19 and 28). Williams recalled observing a pedestrian injured on the ground; the pedestrian had already been moved from the street to the sidewalk (*id.* at 19 and 34). Williams testified that a witness told him a truck struck the pedestrian and left the scene (*id.*). The same witness handed Williams a license plate found in the roadway and told Williams that it had come off the truck that struck the pedestrian (*id.* at 25-26). According to the police accident report, Williams determined that Kaur was the registered owner of the vehicle, identified as a 2018 Ford pick-up truck, bearing license plate no. HLC8247 (*id.* at 31-32; NYSCEF Doc No. 73, Allison affirmation, exhibit J at 1).

Kaur testified that she was the lessee of a 2018 Ford F150 pickup truck in November 2020 (NYSCEF Doc No. 75, Allison affirmation, exhibit L, Kaur tr at 13-15 and 17). She and her husband, Kuldip, used the truck, though she also allowed one of her sons, defendant Amritpal Singh (Amritpal), to use it, as well (*id.* at 16-17). Amritpal owned a construction company, but Kaur stated that Amritpal only ever borrowed the truck for his personal use and not for his business (*id.* at 18-19). Kaur granted Amritpal’s request to borrow the truck on the day of the accident (*id.*

at 27). Kaur testified that she saw damage to the front of the truck the next day as it was parked in her driveway (*id.* at 28). Kaur explained that Amritpal told her that someone had hit the truck while it was parked (*id.* at 29). Kaur was unaware that the truck had been involved in an accident with a pedestrian (*id.* at 37).

Kuldip testified that he and Kaur resided in the same home as Amritpal, his wife, and their children (NYSCEF Doc No. 76, Allison affirmation, exhibit M, Kuldip tr at 13-14). Kuldip recalled that Amritpal told him that someone had backed into it when it was parked (*id.* at 23).

Amritpal owns and operates LHG, a construction company engaged in performing small maintenance jobs and masonry and tile work; LHG is based out of the home Amritpal shares with his parents and family (NYSCEF Doc No. 77, Allison affirmation, exhibit N, Amritpal tr at 10 and 12). Amritpal stated that the Ford F150 pickup truck belonged to his father, though he would use that vehicle with permission (*id.* at 17). He used the truck “very less” for his construction work (*id.* at 16-17).

Amritpal testified that one to two days prior to the accident, LHG was performing work in Manhattan when the NYPD impounded the vehicle of one of its employees, Antonio Garcia (Garcia) (*id.* at 18-20). Although LHG owned a dump truck and a pickup truck (*id.* at 12), Amritpal borrowed his parents’ truck between 4 p.m. and 5 p.m. on the day of the accident, drove to pick up Garcia from New Hyde Park where Garcia was working for LHG, and together, they drove to the impound lot near the West Side Highway and 38th or 40th Streets in Manhattan to retrieve Garcia’s vehicle (*id.* at 19-20 and 22). Amritpal parked the truck a couple of blocks from the impound lot (*id.* at 23). When Amritpal returned to the truck two hours later, he noticed damage to the front grille or bumper area (*id.* at 24-25). Amritpal testified, “I saw significant damage ... when I parked my car, it was parked with a good space and everything. I don’t know. Maybe

something backed into or, you know, something hit it pretty hard” (*id.* at 25). He could not recall if the license plate was attached to the truck, but he would have retrieved it if he saw it on the ground (*id.* at 30). Amritpal stated that he located a police officer and attempted to file a report, but the officer directed him to look online (*id.* at 24). He drove the truck home and told his parents of the damage the following morning (*id.* at 24 and 36). Amritpal took photographs of the truck for his parents’ insurance carrier, and it was at this time that he noticed the license plate on the front of the truck was missing (*id.* at 39). Amritpal denied driving on West 23rd Street on the day of the accident, and testified, “[n]o, I didn’t hit anybody with the truck” (*id.* at 29).

Plaintiff commenced an action against Kaur and Kuldip in 2021 (NYSCEF Doc No. 65, Allison affirmation, exhibit B) and a separate action against LHG and Amritpal in 2022 (NYSCEF Doc No. 67, Allison affirmation, exhibit D), which have since been consolidated (NYSCEF Doc No. 70, Allison affirmation, exhibit G). As is relevant here, plaintiff alleges that Amritpal was operating the truck owned by Kaur during the course of his employment for LHG when he was involved in the collision with plaintiff (NYSCEF Doc No. 67, ¶¶ 33-35).

Discussion

It is well settled that a party moving for summary judgment under CPLR 3212 “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” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The “facts must be viewed ‘in the light most favorable to the non-moving party’” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [citation omitted]). Assuming the moving party meets its prima facie burden, the opposing party must “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Bazdaric v Almah Partners LLC*, — NY3d —, —, 2024 NY Slip Op 00847, *3

[2024] [internal quotation marks and citation omitted]). If the moving party fails to meet its prima facie burden, the motion must be denied, regardless of the sufficiency of the opposing party's papers (*Vega*, 18 NY3d at 503).

A. Kuldip's Cross-Motion

As a preliminary matter, Kuldip has withdrawn his cross-motion for summary judgment in correspondence to the court dated May 9, 2023 (NYSCEF Doc No. 105).

B. LHG's Motion

LHG argues that summary judgment is appropriate because Amritpal denied striking plaintiff with Kaur's truck. Assuming Amritpal had struck plaintiff with the truck, LHG submits that Amritpal was acting outside the scope of his employment when the accident occurred because he was on a personal errand.

The common-law doctrine of respondeat superior provides that "an employer may be vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer's business and within the scope of employment" (*N.X. v. Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]). "Whether an employee acted within the scope of employment is a fact-based inquiry" (*Riviera v State of New York*, 34 NY3d 383, 390 [2019]), as "[t]here is no single mechanical test to determine whether at a particular moment an employee is engaged in the employer's business" (*Rausman v Baugh*, 248 AD2d 8, 10 [2d Dept 1998]). For the doctrine to apply, "the employee must be performing some act in furtherance of a duty he owes the employer and where the employer is, or could be, exercising some control, directly or indirectly, over his activity" (*Johnson v Daily News*, 34 NY2d 33, 35 [1974]). Factors to consider include:

"the connection between the time, place and occasion for the act; the history of the relationship between employer and employee as spelled out in actual practice; whether the act is one commonly done by such an employee; the extent of departure from normal methods

of performance; and whether the specific act was one that the employer could reasonably have anticipated”

(*Riviello v Waldron*, 47 NY2d 297, 303 [1979]). Whether an employee is acting with the scope of his or her employment is ordinarily a question of fact for the jury (*id.*).

“As a general rule, an employee driving to and from work is not acting in the scope of his employment” (*Lundberg v State of New York*, 25 NY2d 467, 471 [1969], *rearg denied* 26 NY2d 883 [1970]). As the Court of Appeals explained, “such activity is work motivated, [but] the element of control is lacking” (*id.*). However, an exception to this rule exists. “[A]n employee who uses his car in furtherance of his work is acting in the scope of his employment while driving home from his last business appointment, since such a person is working, and is under his employer’s control, from the time he leaves the house in the morning until he returns at night” (*id.*). The exception to the general rule applies, for instance, to traveling salespersons and repairpersons (*Swierczynski v O’Neill*, 41 AD3d 1145, 1147 [4th Dept 2007], *rearg denied* 43 AD3d 1454 [4th Dept [2007], *lv denied* 9 NY3d 812 [2007]). “[I]n cases involving employment-related travel, an employer may be liable in the event that the employment created the ‘need to be on the particular route on which the accident occurred’” (*Margolis v Volkswagen of Am., Inc.*, 77 AD3d 1317, 1319 [4th Dept 2010] [citation omitted]). When travel is part of the defendant’s employment, “the crucial test is whether the employment created the necessity for the travel” (*Swartzlander v Forms-Rite Bus. Forms & Printing Serv.*, 174 AD2d 971, 972 [4th Dept 1991], *affd* 78 NY2d 1060 [1991] [citation omitted]).

Here, drawing every inference in plaintiff’s favor, as this court must (*Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 NY3d 488, 496 [2019]), LHG has not dispelled all questions of material fact (*see Xuezheng Dong v Cruz-Marté*, 223 AD3d 463, 463-464 [1st Dept 2024]). A jury could reasonably conclude that Amritpal’s act of driving his employee to retrieve that employee’s

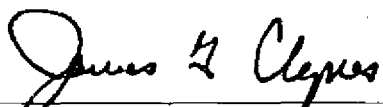
vehicle, which had been impounded while that employee was working for LHG, was an act incidental to the furtherance of LHG’s business (*see Kelly v Starr*, 181 AD3d 799, 801 [2d Dept 2020]; *Palumbo v Prenga*, 295 AD2d 170 [1st Dept 2002]; *Baguma v Walker*, 195 AD2d 263 [1st Dept 1993]). Thus, it cannot be said that Amritpal was running a purely personal errand (*see Xin Tang Wu v Ng*, 70 AD3d 818, 819 [2d Dept 2010]). That Amritpal was driving Kaur’s truck is not dispositive on whether the doctrine of respondeat superior applies, since Amritpal testified that he occasionally drove his parents’ truck for his work. Consequently, LHG’s motion is denied without regard to the sufficiency of plaintiff’s opposing papers.

Accordingly, it is

ORDERED that the motion brought by defendant Lion Heart Group, Inc. for summary judgment is denied; and it is further

ORDERED that the cross-motion brought by defendant Kuldip Singh for summary judgment is permitted to be withdrawn in accordance with said defendant’s correspondence (NYSCEF Doc No. 105).

This constitutes the Decision and Order of the Court.

<p><u>3/19/2024</u> DATE</p>			 _____ JAMES G. CLYNES, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE