

Monk v Luna

2024 NY Slip Op 32461(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 450721/2021

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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DAMON MONK, SHAAKIRYAH RAMKISSOON

Plaintiff,

- v -

ALBERTO LUNA,

Defendant.

INDEX NO. 450721/2021
MOTION DATE 08/03/2023
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 103, 104, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents and following oral argument, it is ordered that the motion by Plaintiffs Damon Monk (Monk) and Shaakiryah Ramkissoon (Ramkissoon) pursuant to CPLR 3212 for an Order granting summary judgment on liability in favor of Plaintiffs and against the sole remaining Defendant Luna¹ is decided as follows:

Plaintiffs seek recovery for personal injury sustained as a result of a March 16, 2020 motor vehicle accident between a vehicle operated by Monk, in which Ramikssoon was a passenger, and a vehicle operated by Luna.

By Decision and Order, dated March 28, 2022, the Court denied a motion by Plaintiff-on-the-Counterclaim Monk's motion for summary judgment on liability in his favor and against Defendants and for dismissal of the Counterclaim against Monk (Motion Sequence #001). By Decision and Order dated March 29, 2022, the Court denied Plaintiffs' motion for summary judgment on the issue of liability only in favor of plaintiffs and against defendants and for dismissal of the counterclaim against Monk and granted the cross-motion by Defendant Lease Plan, USA, LT (Lease Plan) for summary judgment in favor of Lease Plan and dismissed the Plaintiff's

¹ Plaintiffs' Notice of Motion seeks an Order granting summary judgment on liability only in favor of plaintiffs and against defendants Alberto Luna and Lease Plan USA LT and dismissal of the counterclaim against Monk, but the Complaint against Lease Plan USA LT was dismissed and the Counterclaim against Monk was discontinued.

Complaint against Lease Plan (Motion Sequence #003). Luna's counterclaim against Plaintiff-On-The-Counterclaim Monk was discontinued by stipulation, dated January 3, 2024.

The March 28, 2022 Decision and Order on Motion Sequence #001 denied the motion based upon a finding that the conflicting affidavits of the parties raised issues of fact as to the existence of an emergency, the reasonableness of Luna's response to that emergency, and whether defendant Monk observed plaintiffs' vehicle prior to the collision. The March 29, 2022 Decision and Order on Motion Sequence #3 denied the motion for the reasons set forth in the March 28, 2023 Decision and Order.

In support of their motion, Plaintiffs rely on the June 24, 2023 examination before trial testimony of Luna. Plaintiffs contend that Plaintiffs' affidavits as well as deposition testimony alleges that Plaintiffs' vehicle had been stopped for approximately 20-30 seconds prior to the impact and that Defendant Driver reversed into Plaintiffs' stationary vehicle. Plaintiffs further contend that Defendant Luna's July 24, 2023 testimony contradicts his prior affidavit and eliminates any issues of fact as to the Luna's liability for the accident.

Luna testified that he was stopped for thirty seconds at a traffic signal in the middle lane of Madison Avenue at the intersection with East 101st Street when he saw a person exit a vehicle to the left of Luna's vehicle and fall to the ground; that Luna reversed his vehicle to notify police who were parked two car-lengths to the rear of and left of Luna's vehicle about the person who fell; that Luna turned his head to look before reversing; that he looked in his rear view mirror; that he reversed his vehicle about five feet when Luna's vehicle made contact with the front of plaintiffs' vehicle. Luna also testified that he did not see anyone behind him before his vehicle made contact with Plaintiffs' vehicle, and that the first time he saw Plaintiff's vehicle was after the impact.

In opposition, Defendant contends that the Plaintiffs' motion must be denied (1) because their prior motion for summary judgment on liability was denied and the instant motion was not made with leave to renew; (2) because Plaintiffs failed to attach a copy of the pleadings to the motion; (3) because the motion is not supported by admissible evidence because the evidence attached to Plaintiffs' motion, Luna's testimony, is not admissible; because it is unsigned,

unaffirmed and was never offered to Luna for authentication and review, and the remaining evidence referred to by Plaintiffs, namely the affidavits, were not attached to the instant motion and are nonetheless invalid; and (4) because there is a question of fact as to whether Monk contributed to the accident.

In reply, Plaintiffs contend that Defendant's opposition focuses on procedural defects without citing any prejudice to the Court or the parties.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]" (*Zuckerman v New York*, 49 NY2d 557, 560 [1980]). Multiple motions for summary judgment are generally disfavored unless there is a showing of newly discovered evidence or sufficient cause (*Natl. Enters. Corp. v Dechert Price & Rhoads*, 246 AD2d 481 [1st Dept 1998]). Here, Plaintiffs filed the subject motion for summary judgment after completion of Luna's examination before trial. In light of these circumstances the Court will consider Plaintiffs' motion (*Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]). Further, the Court will consider Luna's deposition transcript, because although unsigned, Defendant does not refute any statements within the document and Defendant fails to articulate any prejudice to them if the Court were to consider the testimony.

Plaintiffs have established prima facie entitlement to summary judgment through their submission. "A driver of a vehicle shall not back up unless such movement can be made with safety and without interfering with other traffic" (VTL 1211). Drivers have a "duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Deangelis v Kirschner*, 171 AD2d 593, 595 [1st Dept 1991]). Here, it is undisputed that at the time of the accident, Luna was reversing in the opposite direction of traffic while Plaintiffs were behind Luna in traffic. Luna's assertion that plaintiff crossed the street outside of a crosswalk, and

that defendant did not see plaintiff when he was reversing his vehicle does not excuse his violation of the VTL.

Defendant's attorney affirmation in opposition fails to raise an issue of fact sufficient to preclude a determination of liability in favor of plaintiffs and against Luna. The emergency doctrine is not applicable in this case because there is no dispute that Luna reversed into Plaintiffs' vehicle.

Accordingly, it is

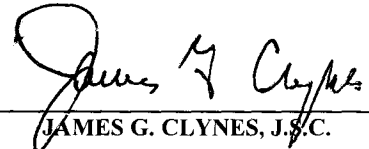
ORDERED that Plaintiffs' motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, Plaintiff shall serve a copy of this Decision and Order upon Defendant with Notice of Entry.

This constitutes the Decision and Order of the Court.

7/12/2024
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	DENIED