

**Islam v Wahba**

2024 NY Slip Op 32477(U)

July 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 515598/2021

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 16th day of July 2024

HONORABLE FRANCOIS A. RIVERA

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AHASAN ISLAM,

Plaintiff,

-against-

YOUSSEF N. WAHBA and FCLS ENTERPRISE LLC.,

Defendants.

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**DECISION & ORDER**

Index No. 515598/2021

Ms. 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on January 30, 2024, under motion sequence number one, by Ahasan Islam (hereinafter plaintiff) for an order pursuant to CPLR 3212 granting summary judgment in plaintiff’s favor on liability as against Youssef N. Wahba and FCLS Enterprise LLC (hereinafter the defendants) and striking the defendants’ second and fourth affirmative defense. The motion is opposed.

- Notice of motion
- Statement of material facts
- Affirmation in support
  - Exhibits 1-8
- Affirmation in opposition
  - Exhibits A-D
- Affidavit in opposition
  - Exhibits A-D
- Memorandum of law in opposition
- Counter statement of material facts
- Affirmation in reply

## **BACKGROUND**

On June 25, 2021, plaintiff commenced the instant action for damage for personal injury by filing a summons and verified complaint with the Kings County Clerk's office (KCCO). On March 7, 2022, the defendants interposed and filed a joint verified answer. As relevant to the motion, the second affirmative defense alleges that the plaintiff was comparatively at fault in the happening of the accident. The fourth affirmative defense alleges that the plaintiff's injuries were contributed to by the failure to properly use a seat belt.

Plaintiff's verified complaint, bill of particulars, and deposition testimony allege the following salient facts. On November 16, 2019, at approximately 11:10 p.m., plaintiff was operating his 2015 Nissan motor vehicle on Washington Street near its intersection with Hubert Street, New York, New York. Plaintiff was wearing his seat belt at the time. At that time and place, plaintiff was stopped, parked with his hazard light on, and was letting out a passenger. While stopped for about one or two minutes plaintiff's vehicle was hit in the rear (hereinafter the subject accident) by a Ford Taurus operated by Youssef Wahba and owned by FCLS Enterprise. The collision was caused by Wahba's negligent operating of his vehicle. Plaintiff suffered serious injury caused by the subject accident.

## **LAW AND APPLICATION**

"A rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that

operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision” (*Toala v EAN Holdings, LLC*, 191 AD3d 724 [2d Dept 2021], citing *Nowak v Benites*, 152 AD3d 613, 614 [2d Dept 2017]).

Here, the plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability by submitting plaintiff’s deposition transcript which demonstrated that the plaintiff was stopped and parked to unload a passenger when the plaintiff was struck in the rear by the defendants’ vehicle (*see Quintanilla v Mark*, 210 AD3d 713, 714 [2d Dept 2022]; *Mahmud v Feng Ouyang*, 208 AD3d 861, 862 [2d Dept 2022]; *Lopez v Dobbins*, 164 AD3d 776, 777 [2d Dept 2018]). The plaintiff also established prima facie entitlement to judgment as a matter of law dismissing the defendants’ fourth affirmative defense alleging that plaintiff’s injuries were contributed to by the failure to properly wear a seat belt. The defendants’ opposition papers did not raise a triable issue of fact.

The plaintiff, however, did not establish prima facie entitlement to the striking of the affirmative defense of comparative negligence. Plaintiff’s testimony established that he stopped in the lane for moving traffic to unload a passenger because there were no parking spots available. Plaintiff failed to establish that he “stopped the vehicle at a location where it was permissible to do so momentarily for the purpose of discharging a passenger” (*Burton v Virk*, 226 AD3d 641 [2d Dept 2024], citing Vehicle and Traffic Law § 1202 [a] [2]).

**CONCLUSION**

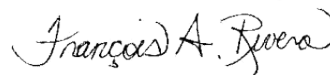
The branch of the motion by plaintiff Ahasan Islam for an order pursuant to CPLR 3212 granting summary judgment in plaintiff's favor on the issue of liability as against Youssef N. Wahba and FCLS Enterprise LLC is granted.

The branch of the motion by plaintiff Ahasan Islam for an order striking the defendants' fourth affirmative defense is granted.

The branch of the motion by plaintiff Ahasan Islam for an order striking the defendants' second affirmative defense of comparative fault is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



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J.S.C.