

Singh v Zayas

2024 NY Slip Op 35009(U)

July 31, 2024

Supreme Court, Queens County

Docket Number: Index No. 705547/20

Judge: Timothy J. Dufficy

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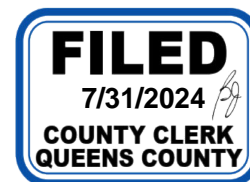
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35



-----X
CORY SINGH,

Plaintiff,

-against-

Index No.: 705547/20
Mot. Date: 6/4/24
Mot. Seq. 3

JONATHAN ZAYAS, CARDASH INC. and
CARDASH HOLDINGS I CORP,

Defendants.

-----X
The following papers were read on this motion by plaintiff for an order, *inter alia*, pursuant to CPLR 3212, granting partial summary judgment in favor of the plaintiff against the defendants on the issue of liability; and for an order, pursuant to CPLR 3025(d), to amend the complaint to include punitive damages.

PAPERS
NUMBERED

Notice of Motion -Affidavits-Exhibits.....	EF 76-94
Answering Affidavits.-Exhibits.....	EF 95
Replying Affidavit.....	EF 96

Upon the foregoing papers, the motion by plaintiff is granted in part and denied in part, as follows.

This action for personal injuries arises out of a motor vehicle collision, that occurred on January 29, 2020, on Lefferts Boulevard, at or near North Conduit Avenue, in Queens County. Plaintiff was the operator or a motor vehicle that was struck by a vehicle operated by defendant Jonathan Zayas (Zayas) and owned by defendant Cardash Holdings I Corp (Cardash Holdings).

The court file reflects that this action was commenced by the filing of a Summons and Complaint, on May 26, 2020, and an Answer was served on behalf of Cardash Holdings, on June 29, 2020, and Answer was served on behalf of Zayas, on August 19, 2020. Although the file reflects that Cardash Inc. was served, on June 1, 2020, no Answer was ever served on behalf of that entity and the plaintiff did not timely move for a default judgment against it. The Note of Issue was filed, on February 23, 2024, and the instant motion was made on April 18, 2024.

Plaintiff moves for an order, *inter alia*, pursuant to CPLR 3212, granting partial summary judgment in favor of the plaintiff against the defendants on the issue of liability; and for an order, pursuant to CPLR 3025(d), to amend the complaint to include punitive damages.

As to the branch of the motion for summary judgment on the issue of liability such is granted. In support of his motion, the plaintiff submits, *inter alia*, the pleadings, his affidavit, his deposition transcript and a certified police accident report. Plaintiff contends, in sum and substance, that his vehicle was stopped in the left hand lane of Lefferts Boulevard for a traffic light, when the Zayas/Cardash Holdings vehicle, that had been traveling behind him in the same direction and was fleeing from the police, struck the driver's side of his vehicle, pushing it into another vehicle. Plaintiff alleges that Zayas then continued driving. Prior to the accident, Zayas had, *inter alia*, drove on the opposite side of the double yellow line, in violation of Vehicle and Traffic Law § 1126 (a).

A movant for summary judgment must make *prima facie* showing of entitlement to summary judgment as a matter of law through the submission of sufficient evidence to demonstrate the absence of any material issues of fact, and he or she must do so by tender of evidentiary proof in admissible form (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). Once the movant has made the *prima facie* showing, the burden shifts to the opposing party to come forward with sufficient proof in admissible form to establish the existence of triable issue of fact (*Alvarez v Prospect Hosp.*, *supra*, 68 NY2d 320, 324).

A plaintiff moving for summary judgment on liability against a defendant must establish that the defendant was negligent. Failure to do so requires denial of the motion, even if the plaintiff was free from comparative negligence (*Phillips v D&D Carting*, 136 AD3d 18, 24 [2d Dept 2015]). A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the accident (*see Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]).

Here, the plaintiff has established a *prima facie* entitlement to summary judgment against Zayas and Cardash Holdings. "[A] violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se" (*E.B. v Gonzalez*, 208 AD3d 618, 619 [2d Dept 2020] [internal quotation marks omitted]; *see Orellana v Mendez*,

208 AD3d 888, 889 [2d Dept 2020]). If one party has established that the other party has committed negligence per se, the burden then falls to the opposing party to submit a nonnegligent explanation for the action" (*Orellana v Mendez*, 208 AD3d at 889).

In opposition, Zayas and Cardash Holdings fail to offer a non negligent explanation as they do not submit any evidence disputing the plaintiff's version of the accident. They only submit an attorney affirmation. It is well settled that an affirmation from a party's attorney who lacks personal knowledge of the facts, is of no probative value (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Wisnieski v Kraft*, 242 AD2d 290 [2d Dept 1997]; *Lupinsky v Windham Constr. Corp.*, 293 AD2d 317 [1st Dept 2002]).

Accordingly, since the plaintiff established a *prima facie* entitlement to summary judgment against defendants Zayas and Cardash Holdings, and these defendants failed to raise a triable issue of fact in opposition, the plaintiff is entitled to partial summary judgment against them on the issue of liability.

However, the branch of plaintiff's motion seeking to amend the Summons and Complaint to add a claim for punitive damages is denied. Although the facts underlying the claim were known to the plaintiff at the time of the commencement of the action, the instant motion was made nearly four years after the commencement of litigation and after the filing of the Note of Issue and is thus prejudicial (*see e.g. Heller v. Louis Provenzano, Inc.*, 303 AD3d 20 [1st Dept 2003]). Furthermore, even assuming, without deciding, that punitive damages were appropriate, Cardash Holdings, as the owner of the vehicle, can only be vicariously liable for the collision and not for punitive damages (*see Hale v Saltamacchia*, 28 AD3d 715 [2d Dept 2006]).

Accordingly, it is

ORDERED that plaintiff's motion is granted in part and denied, in part, in that:
it is

ORDERED the branch of plaintiff's motion for partial summary judgment on the issue of liability against defendants Jonathan Zayas and Cardash Holdings I Corp is **granted**; and it is further

ORDERED that the branch of plaintiff's motion to amend the Complaint to add a claim for punitive damages is denied; and it is further

ORDERED that any arguments or requests for relief not addressed herein have been considered by the Court and are denied.

Dated: July 31, 2024



TIMOTHY J. DUFFICY, J.S.C.

