

Feuer v Ibrahim

2024 NY Slip Op 35084(U)

September 13, 2024

Supreme Court, Westchester County

Docket Number: Index No. 62327/2023

Judge: Nancy Quinn Koba

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
SHAYNA FEUER,

Plaintiff,

-against-

HESHAM M. IBRAHIM and AMAL CAB CORP.,

Defendants.
-----x

QUINN KOBA, J.

By notice of motion, plaintiff, Shayna Feuer ("Feuer"), seeks an order, pursuant to CPLR 3212(e), for partial summary judgment on the issue of liability in her favor and against defendants, and for such other and further relief as is just and proper. Defendants, Hesham M. Ibrahim ("Ibrahim") and Amal Cab Corp. ("Amal Cab") oppose the motion.

The following papers were considered in determining the motion:

<u>PAPERS</u>	<u>NYSCEF DOC. No.</u>
Notice of motion, Affirmation in support, Exhibits A-D, Statement of material facts	16-22
Affirmation in opposition, Response to statement of material facts, Exhibits A-C, Affidavit of service	25-30
Reply affirmation	31

Upon the foregoing documents, the Court determines the motion as follows:

On or about June 12, 2023, Feuer commenced this personal injury action by filing a summons and complaint. Therein, Feuer alleges that, on April 13, 2023, she was a pedestrian in a painted crosswalk on a one-way street when a vehicle, owned by Amal Cab and operated by Ibrahim, (the "Taxi"), struck her as it was travelling in the wrong direction on the said street. Issue was joined as to defendants when they filed their joint answer on October 9, 2023. A note of issue was filed on April 16, 2024. Feuer now brings this motion.

In support of her motion, Feuer submits, *inter alia*, copies of the transcripts from Ibrahim and Feuer's depositions and photographs of the subject street. In opposition, defendants submit, *inter alia*, photographs of the Taxi, and a certified copy of the police report.

"On a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action. The moving party's failure to make a *prima facie* showing of entitlement to summary judgment requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotations and citations omitted]).

"It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d at 505 [internal citation omitted]). "[I]n deciding a motion for summary judgment, issue-finding, rather than issue-determination, is the key to the procedure" (*id.* [internal quotation marks and citation omitted]).

Summary judgment is not warranted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (see *Karel v Pizzorusso*, 215 AD3d 738 [2d Dept 2023]).

A plaintiff moving for summary judgment in a negligence action on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to plaintiff, and that the

defendant's negligence was a proximate cause of the plaintiff's alleged injuries (see *Dieubon v Moore*, 229 AD3d 686 [2d Dept 2024]). "There can be more than one proximate cause of an accident, and, [g]enerally, it is for the trier of fact to determine the issue of proximate cause (internal quotation marks and citations omitted). However, the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts" (*Choo v Virginia Transp Corp*, 204 AD3d 743, 744 [2d Dept 2022] [internal quotation marks and citation omitted]).

Here, Feuer failed to establish, *prima facie*, her entitlement to judgment as a matter of law on the issue of liability. Feuer also failed to eliminate triable issues of material facts on this issue, as Feuer's proffered evidence contains conflicting accounts of the accident. According to Feuer's deposition testimony, Feuer was riding a bicycle in a painted crosswalk and turning left while still in the crosswalk onto Mount Carmel Place, a one-way, southbound roadway in Manhattan, when the Taxi backed into her as it was travelling northbound, in reverse, on the said roadway. According to Ibrahim's deposition testimony, however, the Taxi was past the subject crosswalk when Ibrahim found an empty parking space on the subject street. Ibrahim was backing the Taxi into the said parking space, taking all necessary precautions, when he felt an impact to the rear of the Taxi and heard a scream. According to Ibrahim, the vicinity was clear of any vehicles, including bicycles, and pedestrians as he was attempting to park the Taxi. As such, the issue of proximate cause cannot be determined as a matter of law because more than one conclusion may be drawn from the different factual accounts given by the parties at their respective depositions. Evaluating the conflicting accounts of the accident requires a credibility determination which is beyond the scope of the Court's function in determining the motion. Based on the foregoing, the Court need not assess the sufficiency of defendants' opposition submissions.

All other arguments raised on the motion and evidence submitted therewith have been considered by this Court, notwithstanding the specific absence of reference thereto.

Accordingly, it is hereby

ORDERED that plaintiff's motion for partial summary judgment, pursuant to CPLR 3212(e), on the issue of liability is denied; and it is further

ORDERED that the parties shall appear in **Courtroom 1602 for an in-person Settlement Conference on November 7, 2024, at 9:30 a.m.,**

and shall timely file the settlement form uploaded to NYSCEF on May 6, 2024 as a court attachment (NYSCEF Doc. No.15-1)to the court notice.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
September 13, 2024

ENTER:



HON. NANCY QUINN KOBA, J.S.C.

TO: All Counsel VIA NYSCEF