

Nutifafa v E. Villa Transp., LLC
2024 NY Slip Op 35085(U)
August 8, 2024
Supreme Court, Westchester County
Docket Number: Index No. 62557/2023
Judge: Nancy Quinn Koba
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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
ELI NUTIFAFa,

Plaintiff,

DECISION & ORDER

Index No. 62557/2023
Mot. Seq. No. 1

-against-

E. VILLA TRANSPORT, LLC and BRAULIO
VALLEJO-MINAYA,

Defendants.

-----x
QUINN KOBA, J.

By notice of motion (the "Motion"), plaintiff, Eli Nutifafa ("Nutifafa") seeks an order, pursuant to CPLR 3212, for summary judgment on the issue of liability,¹ and for such other and further relief as is just and proper. The Motion is unopposed.

The following papers were considered on the Motion:

<u>Papers</u>	<u>NYSCEF DOC. No.</u>
Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits A-B	13-17

Upon the foregoing papers, the Motions are determined as follows:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On or about June 16, 2023, Nutifafa commenced this personal injury action by filing a summons and verified complaint against defendants, E. Villa Transport, LLC ("E. Villa") and Braulio

¹The Affirmation in support also seeks dismissal of defendants' affirmative defenses pertaining to plaintiff's culpable conduct/comparative negligence (first) and assumption risk (seventh) and an immediate trial on damages (see NYSCEF Doc. No. 14).

Vallejo-Minaya ("Vallejo-Minaya"). Plaintiff alleges that, on or about May 4, 2023, he sustained serious injuries when the vehicle he was operating was rear-ended by a vehicle owned by E. Villa and operated by Vallejo-Minaya (the "E. Villa Vehicle") while they were travelling on First Avenue in New York City. On August 15, 2023, issue was joined when defendants filed their answer.² Compliance conferences have been held. A virtual trial readiness conference is scheduled for August 14, 2024.

In support of the Motion, Nutifafa submits, *inter alia*, a copy of the transcript from his deposition. The following is a summary of Nutifafa's deposition testimony. On the date of the accident, Nutifafa was operating his leased Toyota Camry (the "Nutifafa Vehicle"), travelling uptown in the middle lane on First Avenue between 58th and 59th streets in New York City. He was a Lyft driver with two passengers in the backseat. Traffic was moving smoothly. The Nutifafa Vehicle was not travelling faster than 25 MPH when it was struck in the rear by the E. Villa Vehicle. Nutifafa felt a "heavy impact" in the back of his vehicle. Nutifafa was wearing his seatbelt and traffic was "flowing smoothly" before the accident occurred. Prior to the accident, Nutifafa did not hear any horns honking or tires skidding.

As a preliminary matter, the Court observes that the affirmation in support does not contain a certificate of compliance regarding length and word count as required by the Rules for New York State Trial Courts that went into effect on February 1, 2021 (see 22 NYCRR § 202.8-b). Although this omission will be overlooked in this instance, counsel is advised that compliance with this rule is expected for all future motions.

Summary Judgment Standard

"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]). Once a prima facie

²The defendants' answer was not annexed as an exhibit even though the affirmation in support refers thereto.

showing is made, the burden shifts to the nonmovant to establish genuine issues of fact (see e.g., *Zuckerman v City of New York*, 49 NY2d 557[1980]).

"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*, 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]).

A plaintiff moving for summary judgment on the issue of liability in a negligence action must establish, *prima facie*, that the defendant breached a duty owed to him or her and that defendant's negligence was a proximate cause of his or her alleged injuries (see *Seizeme v Levy*, 208 AD3d 809 [2d Dept 2022]). Although the plaintiff is no longer required to establish the absence of his or her own comparative fault on a motion for summary judgment on the issue of liability, the issue of plaintiff's comparative fault may be decided therein where the plaintiff also moves for summary judgment dismissing the defendant's affirmative defense alleging comparative negligence and culpable conduct of the plaintiff (see *Fischetti v Simonovsky*, 227 AD3d 670 [2d Dept 2024]).

A violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence *per se* (see *Seizeme v Levy*, 208 AD3d at 809). Vehicle and Traffic Law § 1129(a) provides that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

On a motion seeking to dismiss an affirmative defense(s), the only issue presented is whether there is any legal or factual basis for the assertion of such affirmative defense (see, *Winter v Leigh-Mannell*, 51 AD2d 1012 [2d Dept 1976]).

Here, Nutifafa tendered sufficient evidence establishing his *prima facie* entitlement to judgment as a matter of law on the issue of liability and dismissal of defendants' affirmative defenses alleging contributory negligence and culpable conduct (first) and assumption of risk (seventh). Nutifafa demonstrated, *prima facie*, that the E. Villa Vehicle struck the Nutifafa Vehicle in the rear while the two vehicles were travelling on First Avenue. Moreover, Nutifafa met his burden of establishing that he was free from comparative negligence in the happening of the accident as he was

travelling no faster than 25 MPH under smooth traffic conditions (see *Mora v Moore*, 227 AD3d 802 [2d Dept 2024]). In opposition to Nutifafa's *prima facie* showing, defendants did not submit any opposition and thus failed to raise any triable issue of fact regarding liability.

All other arguments raised and evidence submitted in connection with the Motion have been considered by this Court, notwithstanding the specific absence of reference thereto.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on the issue of liability and dismissal of defendants' first and seventh affirmative defenses is granted, and said defenses are stricken from the defendants' answer, which shall otherwise remain, and the motion is otherwise denied.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
August 8, 2024

ENTER:



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

TO: All Counsel VIA NYSCEF