

Pace v Singh
2024 NY Slip Op 35162(U)
October 30, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 631434/2023
Judge: Alison J. Napolitano
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ORIGINAL

SHORT FORM ORDER

INDEX No. 631434/2023

CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 74 - SUFFOLK COUNTY

PRESENT:

Hon. ALISON J. NAPOLITANO
Justice of the Supreme Court

MOTION DATE 9-24-2024

SUBMIT DATE 10-21-2024

Mot. Seq. # 01 - MG

-----X
JERROLD PACE,

Plaintiff,

- against -

ANNEKA CHRISTINA DEVI SINGH,

Defendant.
-----X

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LAW OFFICES OF JENNIFER S. ADAMS

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Upon the following papers read on this motion for summary judgment; e-filed on the NYSCEF system as documents 14 - 21 & 22 - 23 it is,

The plaintiff moves for an order pursuant to CPLR §3212 granting summary judgment on the issue of liability. The defendant opposes the application stating that the plaintiff's motion is premature as examinations before trial have yet to occur.

The plaintiff, Jerrold Pace, commenced this action to recover damages for personal injuries sustained as a result of a rear-end collision that occurred on July 21, 2022 at approximately 9:00pm. The plaintiff states that he was operating a motor vehicle on the Grand Central Parkway approximately one tenth of a mile west of Union Turnpike in the County of Queens, State of New York. The plaintiff alleges that traffic conditions required him to slow his vehicle and he applied his brakes to begin decelerating and came to a near stop due to the flow of traffic ahead of him. He further states that as he was operating at an appropriate speed and coming to a near stop, his vehicle was struck in the rear by a vehicle being operated by defendant Anneka Christina Devi Singh. Defendant's attorney, in opposition, argues that the motion must be denied as being "premature given the fact that disclosure is not sufficiently complete in the absence of having secured the parties' examinations before trial".

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 (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 416

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NYS2d 790 [1979]). To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form . . . and must “show facts sufficient to require a trial of any issue of fact” CPLR §3212 [b]; *Gilbert Frank Corp. v Federal Insurance Co.*, 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (*Robinson v Strong Memorial Hospital*, 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]).

On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue (*see S.J. Capelin Associates v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [1974]). However, the court must also determine whether the factual issues presented are genuine or unsubstantiated (*Prunty v Keltie's Bum Steer*, 163 AD2d 595, 559 NYS2d 354 [2d Dept 1990]). If the issue claimed to exist is not genuine but is feigned and there is nothing to be tried, then summary judgment should be granted (*Prunty v Keltie's Bum Steer*, *supra*, citing *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 239 NE2d 725 [1968]; *Columbus Trust Co. v Campolo*, 110 AD2d 616, 487 NYS2d 105 [2d Dept 1985], *affd*, 66 NY2d 701, 496 NYS2d 425, 487 NE2d 282).

In support of the motion, plaintiff has submitted, inter alia, an attorney's affirmation; a statement of material facts; copies of the summons and complaint; copies of the answer; copy of the certified police accident report; and an affirmation of the plaintiff, Jerrold Pace.

The sworn affidavit from Jerrold Pace states “I was lawfully operating my vehicle, maintaining my lane of travel, and driving at an appropriate speed given the traffic conditions”. He further states that “Traffic conditions required me to slow down. I applied my brakes and began to decelerate, coming to a near stop due to the flow of traffic ahead of me. Without warning, my vehicle was violently struck in the rear by a vehicle operated by the defendant, Anneka Christina Devi Singh”.

In opposition, the defendant has submitted, inter alia, an attorney's affirmation and a response to the plaintiff's statement of material facts. The opposition claims that the motion is premature because discovery has not been completed in the absence of the parties' examinations before trial. No further exhibits or supporting documentation have been proffered by the defendant.

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The Second Department in *Mahmud v. Feng Ouyang*, 208 A.D.3d 861, 174 N.Y.S.3d 721 (App. Div. 2nd Dept. 2022) held that “[a] rear-end collision with a vehicle that is slowing down 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” (*Hasan v City of New York*, 183 AD3d 572, 573, 121 N.Y.S.3d 653). Drivers must maintain safe distances between their cars and cars in front of them (Vehicle and Traffic Law § 1129 [a]) and this rule imposes on them a duty to be aware of traffic conditions, including vehicle stoppages, to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident (*see Johnson v Phillips*, 261 AD2d 269, 271, 690 NYS2d 545 [1st Dept 1999]).

CPLR §3212(b) states that a motion for summary judgment “shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admission.” If an attorney lacks personal knowledge of the events giving rise to the cause of action or defense, his ancillary affidavit, repeating the allegations or the pleadings, without setting forth evidentiary facts, cannot support or defeat a motion by summary judgment (*Olan v. Farrell Lines, Inc.*, 105 AD 2d 653, 481 NYS 2d 370 (1st Dept., 1984; aff’d 64 NY 2d 1092, 489 NYS 2d 884 (1985); *Spearman v. Times Square Stores Corp.*, 96 AD 2d 552, 465 NYS 2d 230 (2nd Dept., 1983); Weinstein-Korn-Miller, *New York Civil Practice* Sec. 3212.09)).

Here, the plaintiff established a prima facie entitlement to judgment as a matter of law. The plaintiff’s affirmation clearly states that he was slowing for traffic at the time of impact. The defendant was then required to proffer evidence in admissible form to show facts sufficient to require a trial of any issue of fact. In opposition to the motion, the defendant failed to rebut the prima facie showing and did not submit an affidavit in opposition from the defendant, or a witness with personal knowledge of the events giving rise to the cause of action or defense.

Furthermore, in view of the fact that defendant, Anneka Christina Devi Singh, as operator of the rear vehicle involved, had personal knowledge of the relevant facts underlying the accident, the defendant’s purported need to conduct discovery does not warrant denial of the motion (*see Emil Norsic & Son, Inc. v L.P. Transp., Inc.*, 30 AD3d 368, 815 NYS2d 736 [2d Dept 2006]).

This motion by plaintiff for an order awarding summary judgment in his favor on the issue of liability is granted; and it is further

ORDERED that the attorneys for the parties shall proceed to discovery on the issue of damages; and it is further

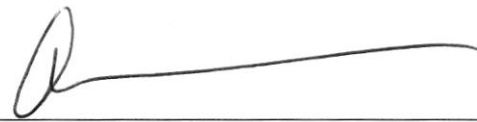
ORDERED that upon the completion of discovery and the filing of a Note of Issue, this action shall proceed to trial on the issue of damages; and it is further

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ORDERED, that the plaintiff's and defendant's attorneys shall appear on **January 15, 2025 at 9:30 a.m.** in part 74, 3rd Floor, Courtroom 4 of the Arthur M. Cromarty Court Complex, 210 Center Drive, Riverhead, New York, as part of the above-referenced action. Attorneys appearing must have knowledge of the case and be authorized to discuss details regarding this action. A failure to appear may result in the matter being dismissed or a default being granted.

The foregoing constitutes the decision and Order of the Court.

Dated: October 30, 2024



HON. ALISON J. NAPOLITANO
J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION