

Sahni v City of New York
2024 NY Slip Op 35202(U)
February 9, 2024
Supreme Court, Queens County
Docket Number: Index No. 718761/2021
Judge: Chereé A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30



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GULZARI LAL SAHNI,

Index No.:718761/2021

Plaintiff,

Motion

Date: December 11, 2023

-against-

Motion Cal. No.: 21

THE CITY OF NEW YORK, THE NEW YORK
CITY POLICE DEPARTMENT, and
PAUL DAMICO,

Motion Sequence No.: 1

Defendants.

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The following e-file papers numbered 13-21, 23-24 submitted and considered on this motion by Plaintiff Gulzari Lal Sahni (hereinafter “Sahni”) seeking an Order granting summary judgment on the issue of liability pursuant to Civil Practice Law and Rules (CPLR) 3212 against defendants The City of New York, The New York City Police Department and Paul Damico (hereinafter referred to as “Damico” and collectively as “City”); and, pursuant to CPLR 3211(b) striking the affirmative defense of comparative negligence. .

Papers
Numbered

Notice of Motion-Affidavits-Exhibits..... EF 13-21
Affirmation in Opposition-Affidavits-Exhibits..... EF 23-24

Commencing this instant litigation on August 19, 2021, Sahni sought to recover damages for injuries allegedly sustained on May 6, 2021. Sahni alleged that on the day of the accident, he was a pedestrian crossing 73rd Avenue from South to North at its intersection with 164th Street, County of Queens, State of New York. The aforementioned intersection was controlled by traffic lights for vehicles and there were painted crosswalk markings on the street. Before crossing the street he looked both ways and with the traffic signal in his favor to cross, he proceeded to cross the street in the crosswalk when City’s vehicle driven by Damico failed to yield the right of way to him and made a left turn and came into contact with his person. Supporting papers included the pleadings, a statement of material facts, his verified bill of particulars and his affidavit dated June 22, 2023.

Discussion

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering admissible evidence to eliminate any material issues of fact from the case. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). To be entitled to summary judgment on the issue of a defendant's liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence" (see *Jordon v Chan*, 214 AD3d 774, 775 [2d Dept 2023] quoting *Maliakel v Morio*, 185 AD3d 1018, 1019 [2d Dept 2020]; see also *Rodriguez v City of New York*, 31 NY3d 312, 324-325 [2018]).

Since Sahni is seeking to a finding that he was not comparatively negligent, the issue of Sahni's comparative negligence may be determined by this Court (see generally *Maliakel v Morio*, 185 AD3d 1018, 1019 [2d Dept 2020]; *Martha A. Balladares et al. v City of New York et al.*, 177 AD3d 942, 943 [2d Dept 2019]; *E.B. v Gonzalez*, 208 AD3d 618 [2d Dept 2022]; *Wray v Galella*, 172 AD3d 1446 [2d Dept 2019]; *Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018].)

A violation of the vehicle and traffic law constitutes negligence as a matter of law (see *Policart v Wheels LT*, 221 AD3d 920 [2d Dept 2023]). Vehicle and Traffic Law ("VTL") § 1111 titled "Traffic-control signal indications" states the following in relevant part:

Whenever traffic is controlled by traffic-control signals, other than lane direction control signal indications provided in section eleven hundred sixteen, exhibiting different colored lights, or colored lighted arrows, successively, one at a time or in combination, only the colors green, yellow and red shall be used, and said light shall indicate and apply to drivers of vehicles and to pedestrians as follows:

(a) Green indications:

1. Traffic, except pedestrians, facing a steady circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Such traffic, including when turning right or left, shall yield the right of way to other traffic lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

VTL § 1163(a) titled “Turning movements and required signals” states the following:

No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

New York City Traffic Rules and Regulations, (34 RCNY) §4-03(a)(1) titled “Traffic Signals” states the following in its entirety:

(a) Traffic control signals. Whenever traffic is controlled by traffic control signals exhibiting different colored lights successively, the following colors shall indicate and apply to operators of vehicles and to pedestrians, except as superseded by pedestrian control signals, as follows:

(1) Green alone: (i) Vehicular traffic facing such signals may proceed straight through or turn right or left unless a sign at such place prohibits any such movement. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

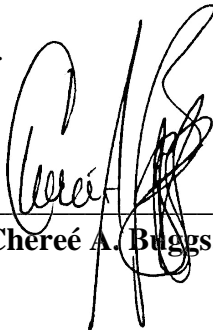
The Court finds that Sahni has demonstrated entitlement to judgment as a matter of law, that on the date of the accident he was a pedestrian crossing in the crosswalk at the aforementioned intersection and City’s vehicle failed to comply with applicable traffic laws under VTL sections 1111, 1163 and 34 RCNY 4-03(a)(1). Now, City is required to come forward with evidence to raise a triable issue of fact. (*See Andre v Pomeroy*, 35 NY2d 361 [2d Dept 1974].)

In opposition, City took no position on the determination of fault as Sahni had argued that the operation of City’s vehicle fell short of the applicable standard outlined in VTL §1111, however the unresolved factual issues of whether Sahni sustained a serious injury as defined under Insurance Law § 5102(d) and causation had not been established, on these papers and required a jury determination. Thus, the Court finds that City has not raised a triable issue of fact as to liability and Sahni has demonstrated that he was also free from any comparative fault. City’s affirmative defense related to same should be stricken.

Therefore, Plaintiff's motion is granted in its entirety. Upon the completion of discovery on the issue of damages, filing a note of issue and compliance with all the rules of the Court, this action shall be placed on the trial calendar of the Court for a trial on the issue of damages.

This constitutes the decision and Order of the Court.

Dated: February 9, 2024



Hon. Chereé A. Buggs, JSC

