

Spann v Bramble

2025 NY Slip Op 32482(U)

June 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 528794/2021

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 30th day of June, 2025.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
FREDDIE SPANN,

Plaintiff,

Index No.: 528794/2021

-against-

DECISION AND ORDER

STELLA BRAMBLE,

Mot. Seq. No. # 5

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Motion Seq No. 5

Notice of Motion/ Affirmation in Support/ Exhibits	93-109
Affirmation in Opposition	113
Affirmation in Reply	116

Plaintiff Freddie Spann ("Plaintiff") commenced this action seeking damages for personal injuries allegedly sustained on September 28, 2021, around 8:10 p.m., when he was a pedestrian hit by a motor vehicle operated by defendant Stella Bramble ("Defendant"). Specifically, Plaintiff contends that Defendant failed to observe Plaintiff in a crosswalk, at the intersection of Dean Street and Franklin Avenue in Brooklyn, New York, while Defendant made a left turn.

Plaintiff moved for summary judgment ("Plaintiff's First Motion") on liability and sought to dismiss Defendant's affirmative defense of comparative negligence. Plaintiff failed to file his supporting affidavit with the motion and attempted to submit the affidavit in his reply. In an order dated June 15, 2023, the Court denied Plaintiff's First Motion without prejudice. Plaintiff again moved for summary judgment ("Plaintiff's Second Motion"), which the Court denied, in an order dated September 14, 2023, after finding issues of fact.

Plaintiff now moves for an order pursuant to CPLR 3212, granting him summary judgment (Mot. Seq. No. 5). In his motion, Plaintiff contends that he is entitled to summary judgment because, at the time of the accident, Defendant negligently operated her vehicle and she was the sole party responsible for the accident. First, Plaintiff avers that Defendant failed to provide admissible evidence to support her claim,

that Plaintiff was comparatively negligent. Plaintiff alleges that Defendant's affidavit omitted key details, including where Plaintiff was and what Defendant did immediately before the accident, which rendered the affidavit devoid of evidentiary value. Second, Plaintiff asserts, that in Defendant's deposition testimony, she recanted her statement that Plaintiff ran into the vehicle. Third, Plaintiff argues that at the time of the accident he had the right of way, was in the middle of the sidewalk, and that is where Defendant first saw Plaintiff.

Defendant opposes Plaintiff's motion on various grounds. Defendant contends that Plaintiff's motion should be denied because it is procedurally defective since Plaintiff failed to state whether he seeks a renewal or re-argument of his motion for summary judgment pursuant to CPLR 2221(d) and (e). Defendant argues that, even if the Court overlooks Plaintiff's procedural defect, Plaintiff failed to establish prima facie entitlement to summary judgment. Defendant also alleges that conflicting accounts of the accident in Plaintiff's and Defendant's deposition testimony, create issues of fact. In support of her argument, Defendant avers that there are material questions of fact as to when Plaintiff was in the middle of the crosswalk, where Defendant's vehicle was hit, and whether Plaintiff exercised due care in crossing the street. In addition, Defendant maintains that her deposition testimony does not differ from her affidavit.

In his reply, Plaintiff asserts that his motion was not procedurally defective. Plaintiff avers that the motion was clearly made, on the basis of party depositions, after discovery concluded. Additionally, Plaintiff argues that Defendant was not prejudiced by Plaintiff's failure to clarify that the motion for summary judgment was a motion to renew.¹ Plaintiff cites to CPLR 2001, which allows mistakes, omissions, defects, or irregularities to be corrected as long as a party is not prejudiced. Accordingly, Plaintiff requests that the Court deem Plaintiff's motion as a motion to renew Plaintiff's Second Motion, which was filed before depositions were completed.

Plaintiff maintains that he established prima facie entitlement to summary judgment. Plaintiff avers that Defendant did not articulate how the cases cited in support of her opposition relates to this case. Plaintiff argues that his affidavit and deposition testimony provide that he had the right of way, was in the middle of the crosswalk at the time of the accident and only saw Defendant's vehicle in his peripheral vision as it hit him. In support of his claim, Plaintiff points to Defendant's testimony that (1) she was in the process of making a left turn and in the middle of the crosswalk when the accident occurred; (2) Defendant did not see Plaintiff before the accident; and (3) the left front bumper of Defendant's vehicle impacted Plaintiff. Additionally, Plaintiff raises a credibility issue with Defendant's assertions. Plaintiff compares Defendant's

¹ The Court notes that "the function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds or evidence for, the motion" (*USAA Federal Savings Bank v Calvin*, 145 AD3d 704, 706 [2d Dept 2016]). Here, the Court considers the Plaintiff's current motion as a motion for leave to renew because of the deposition testimony taken after Plaintiff's Second Motion was submitted.

affidavit, stating that Plaintiff ran into the vehicle before the accident, with Defendant's testimony that she did not see Plaintiff at any time before the accident. Plaintiff alleges that Defendant's claims regarding Plaintiff's comparative negligence are vague and lack evidentiary support. Plaintiff further states that he is not required to show that he is not comparatively negligent when moving for summary judgment on liability.

Although Plaintiff's current motion is his third motion for summary judgment, in reality, it is a motion for leave to renew Plaintiff's Second Motion for summary judgment. A court may treat a motion as a motion for leave to renew despite the movant designating the motion as one for summary judgment. (*see Wells Fargo Bank, N.A. v Osias*, 205 AD3d 979, 981 [2d Dept 2022]; *Wells Fargo Bank, N.A. v Gittens*, 217 AD3d 901, 902 [2d Dept 2023]). "A motion for leave to renew is addressed to the sound discretion of the court (*Matheus v Weiss*, 20 AD3d 454, 454-55 [2d Dept 2005]; *P.J. 37 Food Corp. v George Doulaveris & Son, Inc.*, 189 AD3d 858 [2d Dept 2020]). "[A] motion for leave to renew must be based on upon new facts not offered on the prior motion that would change the prior determination, and must set forth a reasonable justification for the failure to present such facts on the prior motion" (*Deutsche Bank Natl. Tr. Co. v Elshiekh*, 179 AD3d 1017, 1020 [2d Dept 2020]; *Wells Fargo Delaware Tr. Co., N.A. v De Los Santos*, 186 AD3d 900, 901 [2d Dept 2020]; *Deutsche Bank Natl. Tr. Co. v Villatoro*, 235 AD3d 621, 622 [2d Dept 2025]; *see CPLR 2221*). "[A] motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Deutsche Bank Natl. Tr. Co. v Elshiekh*, 179 AD3d 1017, 1020 [2d Dept 2020]; *Wilmington Sav. Fund Socy. FSB v Khandaker*, 217 AD3d 729, 730 [2d Dept 2023]; *Deutsche Bank Natl. Tr. Co. v Villatoro*, 235 AD3d 621, 622 [2d Dept 2025]). "The Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion" (*Worrell v Parkway Estates, LLC*, 43 AD3d 436, 437 [2d Dept 2007]; *Deutsche Bank Natl. Tr. Co. v Elshiekh*, 179 AD3d 1017, 1020 [2d Dept 2020]; *Harway Terrace, Inc. v Shlivko*, 220 AD3d 927, 928 [2d Dept 2023]).

Here, Plaintiff avers that Defendant's deposition testimony, taken after Plaintiff's Second Motion was denied, establishes Plaintiff's entitlement to summary judgment. Plaintiff argues that in Defendant's deposition testimony she recanted statements made in her affidavit regarding Plaintiff's comparative negligence (NYSCEF Doc No. 94, page 3). However, Defendant reiterated that the statements made in her affidavit were correct (Defendant tr at 80, lines 23-25; at 81, lines 2-10). Therefore, there remains a material issue of fact as to how the accident occurred. Upon consideration of the new evidence from Defendant's deposition testimony, the Court adheres to its decision on Plaintiff's Second Motion that there are issues of fact warranting a trial. In any event the conflicting statements made by Defendant in her deposition and in her affidavit raise credibility issues that are not for the Court to determine on a summary judgment motion

(see *Singh v Rosenberg*, 32 AD3d 840, 842 [2d Dept 2006]; *Abrajan v Kabasso*, 2003 NY Slip Op. 51391[U] [Sup Ct., Kings County 2003]).

Accordingly, it is hereby

ORDERED, that Plaintiff's motion (Mot. Seq. No. 5) for leave to renew is granted and upon renewal this Court adheres to its original determination on Plaintiff's Second Motion that there are issues of fact.

All other issues not addressed herein are without merit or moot.²

This constitutes the decision and order of the Court.



HON. INGRID JOSEPH, J.S.C.

HON. INGRID JOSEPH

² Successive summary judgment motions are permitted if the motions are “substantively valid and granting the motion will further the ends of justice and eliminate an unnecessary burden on the resources of the courts” (*Aurora Loan Servs., LLC v Yogev*, 194 AD3d 996, 997 [2d Dept 2021] [internal quotation marks omitted]). A successive motion for summary judgment “should not be entertained in the absence of good cause, such as a showing of newly discovered evidence or other sufficient cause” (*Hilrich Holding Corp. v BMSL Mgt., LLC*, 175 AD3d 474, 475 [2d Dept 2019]; *Deutsche Bank Natl. Tr. Co. v Elshiekh*, 179 AD3d 1017, 1020 [2d Dept 2020]). The newly discovered evidence “not submitted in support of the previous summary judgment motion must be used to establish facts that were not available to the party at the time it made its initial motion for summary judgment, and which could not have been established through alternative evidentiary means” (*Hilrich Holding Corp.*, 175 AD3d at 475). Here, Plaintiff claims to be entitled to have his motion entertained because he offered new evidence taken from Defendant's deposition. If the Court considers Plaintiff's current motion as a successive motion for summary judgment, rather than a motion for leave to renew, the motion would be denied because there are still questions of fact.