

Deleon v Singh

2025 NY Slip Op 34937(U)

December 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 519432/2019

Judge: Reginald A. Boddie

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At an IAS Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 18th day of December 2025.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
EDGAR DELEON,

Plaintiff,

Index No. 519432/2019

-against-

Cal. No. 2 MS 3

RAMANDEEP SINGH and RIGO LIMO-AUTO, CORP.,

Decision and Order

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 3

49-57

Plaintiff's motion for partial summary judgment on the issue of liability and for dismissal of defendants' third affirmative defense is decided as follows:

Background

This action arises out of a February 24, 2019 pedestrian-motor vehicle accident at the intersection of Atlantic Avenue and Rockaway Avenue in Brooklyn. Plaintiff contends he was lawfully crossing within a marked crosswalk with the pedestrian signal in his favor when he was struck by a vehicle owned by defendant Rigo Limo-Auto Corp. and operated by defendant Ramandeep Singh ("Singh") during a left turn. Plaintiff moves for partial summary judgment on liability and dismissal of defendants' third affirmative defense of culpable conduct and/or contributory negligence, arguing that the undisputed deposition testimony, police report, and other

documentary evidence establish that defendant violated multiple provisions of the Vehicle and Traffic Law and New York City Traffic Rules by failing to yield the right of way and failing to exercise due care. Plaintiff contends that defendant admits he did not see the pedestrian before impact, that plaintiff was lawfully in the crosswalk, and that no triable issues of fact exist as to negligence, with no evidence supporting any comparative fault by plaintiff.

In opposition, defendants argue that genuine issues of material fact exist as to how the accident occurred and, at minimum, whether plaintiff was comparatively negligent. Defendants contend plaintiff has not submitted admissible evidence eliminating all triable issues. They emphasize that negligence and credibility determinations, particularly in motor vehicle/pedestrian cases, are generally for a jury. Defendants assert the incident happened at night while Singh was making a slow left turn with the headlights on, and that plaintiff, wearing black clothing, entered the roadway from the right side such that Singh could not see him in time. Defendants also point out that plaintiff testified he did not see the turning vehicle and describes no action taken to avoid impact. On that basis, defendants maintain there are factual questions regarding whether plaintiff kept a proper lookout and used reasonable care for his own safety, which precludes summary judgment and warrants denial of plaintiff's motion.

In reply, plaintiff argues that defendants have failed to submit any admissible, material evidence raising a triable issue of fact to contradict plaintiff's prima facie showing that plaintiff was lawfully in the marked crosswalk with the pedestrian signal in his favor when Singh made a left turn and struck him without ever seeing him beforehand. Plaintiff contends defendants' late-produced affidavit provided in opposition to the motion should be disregarded as improper post-note of issue "back pocket" evidence. Plaintiff asserts that even if such belated affidavit is considered, it only further confirms Singh's liability because it admits he did not see the pedestrian, could not stop in time, and hit him while turning left, consistent with the police report and Singh's

deposition admissions that plaintiff was in the crosswalk. Plaintiff reasserts that these undisputed facts establish negligence per se under the Vehicle and Traffic Law and New York City Traffic Rules and negligence for failure to exercise due care under VTL § 1146(b)(2), and that defendants offer no evidence of any culpable conduct by plaintiff. In any event, plaintiff argues he need not prove freedom from comparative fault to obtain partial summary judgment on liability.

Discussion

It is well established that summary judgment is granted when “the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion’s opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court’s function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). “It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

Here, plaintiff established his prima facie entitlement to judgment as a matter of law by submitting the police accident report and the deposition testimony of both plaintiff and Singh. The record evidence demonstrates that plaintiff was lawfully crossing Atlantic Avenue within a marked crosswalk, with the pedestrian signal in his favor, when defendant Singh made a left turn and struck him. Defendant admitted, both in his deposition testimony and in the statement attributed to him

in the police accident report, that he did not see plaintiff before impact and that the collision occurred while plaintiff was crossing the street in the crosswalk. These facts are undisputed.

“[A] violation of a standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se” (*E.B. v Gonzalez*, 208 AD3d 618, 619 [2d Dept 2022] [citation omitted]). “A driver who faces a green light has a duty to yield the right-of-way to pedestrians who are lawfully within a crosswalk in accordance with the standard of care imposed by Vehicle and Traffic Law § 1111(a)(1)” (*id.*). “A driver also has a statutory duty to use due care to avoid colliding with pedestrians on the roadway [pursuant to Vehicle and Traffic Law § 1146], as well as a common-law duty to see that which he [or she] should have seen through the proper use of his [or her] senses” (*id.* [internal quotation marks omitted]).

Based on defendant’s admissions that he failed to observe plaintiff and struck him while making a left turn, the Court finds that defendants violated these statutory duties and defendants’ actions constitute negligence per se.

In opposition, defendants failed to raise a triable issue of fact. The New York Court of Appeals has “repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [citations omitted]). Although “the facts must be viewed in the light most favorable to the non-moving party ... bald, conclusory assertions or speculation and [a] shadowy semblance of an issue are insufficient to defeat summary judgment” (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016] [citations and internal quotation marks omitted]).

Here, defendants' contentions that it was dark, that plaintiff was wearing black clothing, or that plaintiff possibly failed to keep a proper lookout are insufficient to raise a triable issue of fact.

It is also well established that "[t]o be entitled to partial summary judgment a plaintiff does not bear the ... burden of establishing ... the absence of his or her own comparative fault" (*Balladares v City of New York*, 177 AD3d 942, 943 [2d Dept 2019] [citations omitted]). "Even though a plaintiff is no longer required to establish his or her freedom from comparative negligence, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moved for summary judgment dismissing a defendant's affirmative defense of comparative negligence" (*id.*).

Here, plaintiff demonstrated, *prima facie*, that he was a pedestrian lawfully crossing the street and that he did not contribute to the happening of the accident. In opposition, defendants failed to raise a triable issue of fact as to comparative negligence, relying only on conclusory assertions unsupported by any admissible evidence.

Conclusion

Based on the foregoing, plaintiff's motion for partial summary judgment on the issue of liability is granted, and defendants' third affirmative defense alleging culpable conduct and/or contributory negligence is dismissed. Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the Court's determination.

ENTER:

RAB

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.