SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

PRESENT: HON. ERIN NOELLE GUVEN PART 17
Justice

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JUAN LEONEL VASQUEZ-VENTURA,

Plaintiff,

- v -

AHMED ELTAHLAWY, A. A. AHMEDLHSSNBDLBKY

Defendants.

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INDEX NO. 26890/2020E

MOTION SEQ. NO. 2

DECISION + ORDER ON MOTION

The following papers were read on this motion (Seq. No. #2) for **SUMMARY JUDGMENT:**

Notice of Motion – Affirmation in Support - Exhibits	No(s). 34-42
Affirmation in Opposition - Exhibits	No(s). 43-45
Affirmation in Reply	No(s). 47

Upon the foregoing papers, the motion is determined as follows:

Plaintiff commenced this action by summons and complaint filed on July 6, 2020, alleging he sustained serious injuries as a result of a motor vehicle accident on May 18, 2019, in which Plaintiff alleges he was a cyclist. Plaintiff seeks damages.

Defendants filed an answer with affirmative defenses on July 31, 2020.

Plaintiff filed the instant motion seeking summary judgment on the issue of liability on June 24, 2025.

Defendants filed opposition on July 16, 2025.

Plaintiff filed reply papers on July 21, 2025.

Plaintiff seeks summary judgment as to the issue of Defendants' liability and an Order dismissing Defendants' affirmative defenses relating to comparative negligence. Plaintiff alleges on May 18, 2019, at approximately 11:15 p.m., near the intersection of 96th Street and First Avenue in Brooklyn, New York, Plaintiff was operating his electric bicycle northbound on first avenue in the bicycle lane. He alleges that Defendants' vehicle was traveling next to him on the right, crossed over the bicycle lane to make a left turn into a Shell gas station, and struck him, causing injuries (*see* Plaintiff's Affirmation in Support at ¶¶11-12).

Plaintiff alleges that Defendants violated New York Vehicle and Traffic Law (VTL) §1146(a) by entering a bicycle lane and failing to properly yield to a cyclist. He further claims Defendants violated VTL §1166(b), in making an improper left turn across a bicycle lane (*see* Plaintiff's Affirmation in Support at ¶18). To support her claim, Plaintiff annexes, inter alia, his own deposition testimony. Plaintiff also notes that Defendants are precluded from offering an affidavit in opposition to this motion (*see* Plaintiff's Exhibit 3).

In opposition, Defendants allege that based upon conflicting information contained within the police report in the accident and Plaintiff's' deposition testimony, there is an issue of fact as to whether Plaintiff did or did not see Defendant's vehicle before impact, and whether Plaintiff should have seen the vehicle (*see* Defendants' Affirmation in Opposition at ¶11). Defendants contend, "Plaintiff's deposition testimony indicates that Plaintiff was riding his e-bike at fifteen (15) miles per hour. Plaintiff stated that he did not see the cab, but then Plaintiff also stated the vehicle driven by Defendant AHMED ELTAHLAWY. Plaintiff also stated that the car was stopped when he came into contact with the vehicle, but also that the cab was moving" (*see Id*. at ¶10). To support their argument, Defendants submit an uncertified copy of the police report and the deposition testimony of the Plaintiff.

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered 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" (*Vega v Restani Constr. Corp*., 18 NY3d 499,503 [2012]) (*internal citations and quotations omitted*). When a movant establishes prima facie entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (*see Zuckerman v City of NY*, 49 NY2d 557[1980]).

VTL§1146(a) states, inter alia, "[n]otwithstanding the provisions of any other law to the contrary, every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary". VTL§1146(2) states, inter alia, "[i]f such driver of a motor vehicle causes physical injury while failing to exercise due care in violation of subdivision (a) of this section, then there shall be a rebuttable presumption that, as a result of such failure to exercise due care, such person operated the motor vehicle in a manner that caused such physical injury." VTL §1166(b) states, "[l]eft turns from two-way roadways. The approach for a left turn from a two-way roadway shall be made in that portion of the right half of the roadway nearest the center thereof."

Plaintiff demonstrated prima facie entitlement to summary judgment based on the uncontroverted fact that he was struck by the Defendants' motor vehicle attempting to either merge or turn left, while Plaintiff was a cyclist in the bicycle lane (*see Verna v Little Richie Bus Service, Inc*., 223 AD3d 505 [1st Dept 2024]; VTL§1146).

Defendants' arguments in opposition fail to raise any issue of fact regarding their liability. Defendants' contention that Plaintiff inconsistently testified as to whether Defendants' vehicle was stopped or moving at the time of the accident is unavailing. Plaintiff's deposition testimony clearly sets forth that he was traveling in the bicycle lane when he was struck by Defendants' vehicle. While Defendants do not cite to any specific portion of the deposition testimony to support their contentions, the only seemingly relevant exchange when Plaintiff was asked, "And when your front tire hit this car, was the car moving or was it stopped?". Plaintiff answered, "It was driving into the gas station I think to get gas." The next question was, "I just want to know, was he moving *or was he stopped at the point of contact*, when you hit him" (*emphasis added*). The answer was, "It was stopped" (*see* Defendant's Exhibit B at pg. 60). A few questions later, Plaintiff was asked, "You said the car was stopped when you hit it, so the car didn't you (*sic*), you hit the car, correct?" Plaintiff answered, "No. Pardon me. I may not have understood. No. I was on my lane in the –going in my bike lane and the car was moving on its lane and that's where it hit me" (*see Id.* at pg.62). Plaintiff's testimony was clear throughout the deposition that he was traveling on his bicycle, in the bicycle lane, when he was struck by Defendants' attempt to make a left turn into a gas station.

Defendants also attempt to submit an uncertified police report into evidence to support their contention that Plaintiff's alleged statement to the police, "Bicyclist further stated he (vehicle driver) turned reckless into the gas station which was to late for bicyclist to stop (*sic*)", contradicts Plaintiff's deposition testimony that he did not see Defendants' vehicle before the collision. Defendants argue that this purported contradiction creates an issue of fact. It does not. First, Plaintiff's statement as set down in the police report does not directly contradict the statements made during his deposition. Furthermore, whether Plaintiff saw Defendant's vehicle

"turning recklessly", without affording him time to stop, or at the second of the collision, neither circumstance relieves Defendants of liability (*see Conception v City of New York*, 202 AD3d 403 [1st Dept 2022]).

Based on the uncontroverted evidence that Defendants' motor vehicle struck Plaintiff while he was operating his bicycle in the bicycle lane, and Defendants failed to offer any facts to establish a non-negligent reason for the collision, Plaintiff is entitled to summary judgment on the issue of liability and dismissal of Defendants' affirmative defenses alleging comparative negligence.

Based on the foregoing, it is hereby

ORDERED that the portion of Plaintiff's motion seeking summary judgment on the issue of liability is granted; and it is further

ORDERED that the portion of Plaintiff's motion seeking dismissal of Defendants' affirmative defenses relating to comparative negligence is granted; and it is further

ORDERED that Plaintiff is directed to serve a copy of this Decision and Order with notice of entry on all parties and file proof of service on NYSCEF; and it is further

ORDERED that the parties are to appear for a pre-trial conference on March 03, 2026 at 9:30 a.m., Courtroom 409, Bronx County Supreme Court, 851 Grand Concourse, Bronx, New York; and it is further

ORDERED that any relief sought and not decided herein is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: Bronx, New York

December 3, 2025 E N T E R,

Hon. 

ERIN NOELLE GUVEN, A.J.S.C.

1. CHECK ONE.....	CASE DISPOSED IN ITS ENTIRETY	X CASE STILL ACTIVE
2. MOTION IS.....	XGRANTED DENIED GRANTED IN PART	☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER ☐ SUBMIT ORDER	☐ SCHEDULE APPEARANCE