

Medina v Bekanich
2025 NY Slip Op 35499(U)
February 24, 2025
Supreme Court, Nassau County
Docket Number: Index No. 604001/2024
Judge: Gary M. Carlton
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SUPREME COURT OF THE STATE OF NEW YORK
NASSAU COUNTY

-----X
ANGEL MEDINA,

Sequence 001 & 002
Index No.: 604001/2024

Plaintiffs,

-against-

Hon. GARY M. CARLTON
DECISION AND ORDER

PAUL BEKANICH,

Defendant.
-----X

The following papers read on this motion:

001

Notice of Motion/Supporting Exhibits.....X
Affirmation in Opposition/Supporting ExhibitsX
Reply Affirmation/Supporting ExhibitsX

The following papers read on this motion:

002

Notice of Motion/Supporting Exhibits.....X
Affirmation in Opposition/Supporting ExhibitsX
Reply Affirmation/Supporting Exhibits

FACTS

This is a motor vehicle case where plaintiff moves for summary judgment
and defendant cross moves for summary judgment.

On September 26, 2023 on Glen Cove Avenue 200 feet North of Valentine
Avenue, Sea Cliff, when Plaintiff while operating a Segway was in contact with a
vehicle pulling out from a parking spot.

ARGUMENTS

Plaintiff's counsel argues that Defendant PAUL BEKANICH did not observe what was to be seen by failing to yield the right of way when leaving a parking space.

The defense argues that there is no liability on the driver of a motor vehicle as plaintiff was operating a Segway on the road shoulder.

LAW

The standards for review on a motion for summary judgment are well settled. "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. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers", (Winegrad v. N.Y. Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

The function of the court in determining a motion for summary judgment is issue finding, not issue determination, (Pantote Big Alpha Foods, Inc. v Schefman, 121 AD2d 295(1st Dept. 1986). It is well established that summary judgment should only be granted when there is no doubt as to the absence of triable issues. (See Rotuba Extruders, Inc. v. Ceppos, 46 N.Y.2d 223, 231(1978).

Plaintiff ANGELMEDINA testified that his scooter was on the left side of Defendant PAUL BEKANICH's vehicle. See NYSCEF 30. pg. 14, "I didn't see it

(Defendant), and maybe he didn't see me".

Defendant said he looked in his side view driver's mirror and saw darkness which turned out to be the Plaintiff dressed in dark pants, dark jacket and a dark hat when he saw the cover for the driver's side mirror on the ground and determined that the Plaintiff ran into the driver's side mirror; that his left blinker was still on at the time of the loss. (See See NYSCEF 31 page 16, lines 5-19; page 17, lines 13-21; page 18, lines 4-12; page 19, lines 3-16; page 20, lines 7-11; page 24, lines 2-9 In. 16-18).

Based upon the point of contact the defendant driver has an argument that plaintiff should have seen defendant's vehicle before the accident. These are questions for the fact finder.

If there is any conflict at all in the evidence then the moving party will not be entitled to summary judgment, Andre v. Pomeroy, 35 N.Y.2d 361, 365(1974). If differing inferences may be drawn from the facts, summary judgment should be denied, Supan v. Michelfeld, 97 A.D.2d 755, 756 (2nd Dept. 1983).

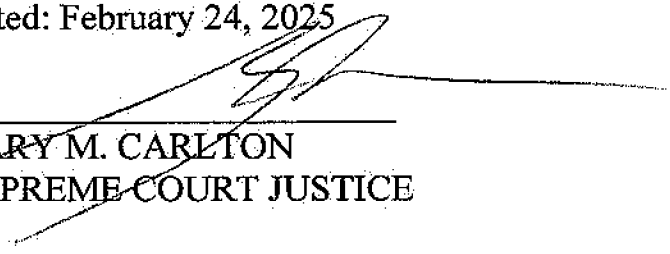
The parties having moved for summary judgment have failed to meet the burden to eliminate triable issues of fact as to how the accident happened and which driver was responsible for the rear end collision, Thoman v. Rivera, 16 A.D.3d 667, 669 (2nd Dept. 2005).

It should be the job of the fact finder to determine which version that it finds more credible, S. J. Capelin Associates, Inc. v. Globe Mfg. Corp., 34 N.Y.2d 338, 341 (1974).

Accordingly, it is hereby

ORDERED, that the motions (001) and (002) for summary judgment on the issue of liability are denied.

Dated: February 24, 2025



GARY M. CARLTON
SUPREME COURT JUSTICE

ENTERED

Feb 26 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE