

Mukadam v Kabir

2018 NY Slip Op 32310(U)

September 13, 2018

Supreme Court, New York County

Docket Number: 160229/2016

Judge: Verna Saunders

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. VERNA L. SAUNDERS, J.S.C. PART

Justice

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INDEX NO. 160229/2016

NABIL MUKADAM,

MOTION SEQ. NO. 002

Plaintiff,

- v -

MOHAMMED KABIR and THE CITY OF NEW YORK,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for

SUMMARY JUDGMENT

Plaintiff commenced this action to recover for personal injuries sustained when he was struck by a vehicle driven by defendant, Mohammed Kabir (“Kabir”), in the crosswalk at the intersection of 2nd Avenue and East 60th Street, New York, New York. According to plaintiff, defendant, the City of New York (“City”) was negligent in its “ownership, operation, maintenance, control, repair, and/or design of the roadway signage” as the signs indicate right turns are permitted on Second Avenue yet, making a right turn would result in traveling against traffic on a one-way road.

At plaintiff’s 50-h hearing, as well as, at his EBT, plaintiff testified that he was crossing the street, with the pedestrian light in his favor, when Kabir drove past, in front of him, against the flow of traffic, made a U-turn, and then struck him. Kabir’s testimony corroborated that of plaintiff inasmuch as Kabir testified that after realizing he was traveling the wrong way on Second Avenue, he made a U-turn and hit plaintiff. Kabir testified that he did not recall the signage and as he was paying attention to his global positioning system (GPS).

The City now moves for summary judgment on the ground that it was not the proximate cause of the accident inasmuch as no amount of signage could have prevented the accident if Kabir was not paying attention to the signage, but instead solely to his GPS. As such, the City contends that it was Kabir’s negligence and malfunctioning GPS that caused the accident.

Co-defendant Kabir opposes the motion arguing that if the City’s signs were clear and visible they may have caught his attention and prevented the accident. Kabir states that he did not recall specific details regarding signs and markings because they were “inconspicuously located and otherwise obscured from sight.” See *Exhibit B, Kabir Affidavit in Opposition*, (NYSCEF Doc 50.)

Additionally, plaintiff cross-moves for summary judgment on the issue of liability as against Kabir and seeks that the matter be set down for an assessment of damages as to said defendant.¹ Lastly, plaintiff contends that there is no evidence of negligence on his part as he was a pedestrian, lawfully crossing the street, in the crosswalk, with the pedestrian signal in his favor at the time of the accident.

The City supports plaintiff’s motion and its argument that Kabir, not the City, is the proximate cause of the accident and seeks that both motions be granted.

Kabir opposes plaintiff’s cross-motion for summary judgment arguing that plaintiff has not proven that he is free from comparative negligence. Kabir relies upon the EBT of plaintiff wherein plaintiff testified that after Kabir passed him going the wrong way he continued to look at him and slowed down hoping Kabir would notice him. Kabir argues that plaintiff failed to stop, waive his arms, or scream in order to get his attention.

¹ The motion adopts the analysis of the facts and deposition testimony as set forth in the City’s motion for summary judgment. The Court further notes that while plaintiff executed a stipulation of discontinuance as to the City of New York, defendant Mohammed Kabir objected to same resulting in City’s instant motion.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. See, *Alvarez v Prospect Hospital*, 68 NY2d 320 (NY 1986) and *Winegrad v New York University Medical Center*, 64 NY2d 851 (NY 1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. See *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989).

Here, Kabir's testimony reveals that signage or the lack thereof was not a proximate cause of this accident as Kabir concedes that he did not recall any signs as he was consulting his GPS. Kabir's affidavit regarding inconspicuous signage is not only self-serving, but also contradictory to his deposition testimony wherein he conceded not recalling any signs as he followed the GPS. Furthermore, Kabir provides no explanation or excuse for why he struck plaintiff, who was lawfully in the crosswalk, after making a U-turn. In point of fact, defendant's arguments regarding comparative fault are misguided as plaintiff was a pedestrian, in the crosswalk, with the light in his favor and had no obligation to waive or scream to attract Kabir's notice. Under these circumstances, both the City and plaintiff are entitled to the respective relief sought. As such, it is

ORDERED that defendant, City of New York's motion for summary judgment is granted and the complaint and all cross-claims are dismissed as against the City of New York, and it is further

ORDERED that within twenty days of entry, the movant shall serve a copy of this order with notice of entry upon all parties and upon the Clerk of this Court and the Trial Support Office, and it is further

ORDERED that upon proof of service of a copy of this order with notice of entry upon all parties the Clerk or this Court is directed to enter judgment dismissing the complaint in its entirety and any cross-claims against the City, and it is further

ORDERED that this action is severed and continued under this index number as against the remaining defendant, and it is further

ORDERED that as the City is no longer a party to this action, the Trial Support Office shall reassign this action to the inventory of a General IAS Part, and it is further

ORDERED that plaintiff's cross-motion for summary judgment is granted as to defendant Kabir's liability only, and it is further

ORDERED that an immediate trial of the issues regarding damages shall be had before the court, and it is further

ORDERED that any relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied.

September 13, 2018



Hon. VERNA L. SAUNDERS, JSC

CHECK ONE:

APPLICATION:
CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE