

Hasan v Singh

2021 NY Slip Op 33136(U)

November 15, 2021

Supreme Court, Queens County

Docket Number: Index No. 715700/2020

Judge: Cheree A. Buggs

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

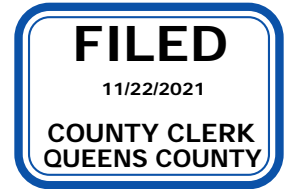
Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

Index No.: 715700/2020

-----X
MUHAMMED HASAN,



Plaintiff,

Motion

Date: November 10, 2021

-against-

Motion Cal. No.: **8** and **9**

KARANPREET SINGH and KETALOS
ENTERPRISE INC.,

Motion Sequence No.: **1** and **2**

Defendants.

-----X

The following e-file papers numbered EF 13-23 and 30-32 submitted and considered on this **motion sequence number 1** by plaintiff MUHAMMED HASAN (hereinafter referred to as "Plaintiff") seeking an Order pursuant to Civil Practice Law and Rules (hereinafter referred to as "CPLR") 3212 for summary judgment on the issue of liability against defendants KARANPREET SINGH and KETALOS ENTERPRISE INC., (collectively referred to as "Defendants") and the efile papers numbered EF 24-29 submitted and considered on this **motion sequence number 2** by Defendants seeking an order pursuant to CPLR 602 consolidating this matter with the matter captioned *Ketalos Enterprise, Inc. v Showli Rashid and Muhammed M. Hasan* bearing index number 016170/2021 ("Action No. 2") currently filed in the Civil Court of the City of New York County of Queens for the purpose of joint trial directing the Clerk of Queens County Civil Court to transfer Action No. 2 to Queens County Supreme Court, both seeking such other and further relief as this Court deems just and proper.

Papers
Numbered

Motion Sequence #1

Notice of Motion- Affirmation in Support- Exhibits	EF 13-23
Affirmation in Opp- Exhibits.....	EF 30-31
Reply Affirmation.....	EF 32

Motion Sequence #2

Notice of Motion- Affirmation in Support- Exhibits	EF 24-29
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This is a negligence action arising out of a motor vehicle collision which occurred on January 18, 2020 at or around 10:25 AM. The undisputed facts are as follows: Plaintiff was traveling eastbound on Hillside Avenue in Jamaica, Queens when both cars collided. It is unclear whether Defendant was traveling northbound out of a driveway onto Hillside Avenue or in the right lane on Hillside Avenue shortly before the collision occurred. Plaintiff contends he was traveling in the left lane for ‘one or two’ minutes at approximately 25-30 mph. Plaintiff alleges he did not change lanes and he saw Defendants vehicle 2-5 seconds before impact, Plaintiff testified as follows:

Q: When you had first seen the vehicle was it traveling on the right side of your vehicle or somewhere else?

A: I just saw the car and it just hit into my passenger side.

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Law and Application

Liability

"[T]he 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 demonstrate the absence of any material issues of fact" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). Once the proponent demonstrates a *prima facie* case, the burden then shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of a material issue of fact requiring a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 [1988]; *Winegrad v. New York Med. Ctr.*, 64 NY2d 851 [1985]). Summary judgment “should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Collado v Jacono*, 126 AD3d 927 [2d Dept 2014]), citing *Scott v Long Is. Power Auth.*, 294 AD2d 348, 348 [2d Dept 2002]; *see Chimbo v Bolivar*, 142 AD3d 944 [2d Dept 2016]; *Bravo v Vargas*, 113 AD3d 579 [2d Dept 2014]). As summary judgment is a drastic remedy, it should not be granted where there is doubt about the existence of any issues (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). To be entitled to partial summary judgment a plaintiff does not bear the ...burden of establishing... the absence of his or her own comparative fault” (*Rodriguez v City of New York*, 31 NY3d 312 [2018]; *Sanders v Sangemino*, 185 AD3d 617 [2d Dept 2020], *lv dismissed* 35 NY3d 1110 [2020]).

Vehicle and Traffic Law

New York Vehicle and Traffic Law (“VTL”) § 1128 entitled “[d]riving on roadways laned for traffic”(a) states: Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

“Vehicle and Traffic Law § 1143 entitled, “[v]ehicle entering roadway,” provides that “[t]he driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed... [a] violation of the Vehicle and Traffic Law constitutes negligence as a matter of law.” (*See Cook v Gomez*, 138 AD3d 675 [2d Dept 2016]; *see also Adobea v Junel*, 114 AD3d 818 [2d Dept 2014]).

VTL § 1173 entitled “[e]merging from alley, driveway, private road or building” states the following:

“The driver of a vehicle emerging from an alley, driveway, private road or building shall stop such vehicle immediately prior to driving onto a sidewalk extending across any alleyway, building entrance, road or driveway, or in the event there is no sidewalk, shall stop at the point nearest the roadway to be entered where the driver has a view of approaching traffic thereon.”

Further, a driver is charged with seeing what there is to be viewed through the proper use of their senses, and are negligent if they fail to do so (*see Lu Yuan Yang v Howsal Cab Corp.*, 106 AD3d 1055 [2d Dept 2013]).

Plaintiff has established prima facie entitlement to judgment as a matter of law by demonstrating that the Defendants failed to yield the right of way.

In opposition, Defendants allege they were traveling less than 15 mph with the left turn signal on in the right lane, that they waited for a truck to drive pass and checked their left side mirror to ensure that no vehicles were approaching before entering the left lane, when “suddenly out of nowhere” Plaintiff approached at approximately 35-40 mph and collided with the front left side of Defendants vehicle.

Defendants failed to raise a triable issue of fact, whether Defendants were exiting a drive way or changing lanes they still had a duty to yield the right of way to Plaintiff, failure to do so was negligent per se.

Consolidation

CPLR 602(a) states in relevant part: “Generally. When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all

the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

Defendants argue both this action and Action No. 2 arise out of the same collision. Opposition was not submitted for motion sequence #2. Therefore it is,

ORDERED, that motion sequence number 1 is granted; and it is further

ORDERED, that motion sequence number 2 is granted; and it is further

ORDERED, that the caption of the actions consolidated for joint trial shall be as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No. 715700/2020

MUHAMMED HASAN,

Plaintiff,

-against-

KARANPREET SINGH and KETALOS
ENTERPRISE INC.,

Defendants.

-----X
KETALOS ENTERPRISE, INC.

Plaintiff,

Index No.: To Be Determined

-against-

SHOWLI RASHID and MUHAMMED M.
HASAN,

Defendants.

and it is further,


ORDERED, that the movant of motion sequence number 2 shall serve a copy of this Order with Notice of Entry within **thirty (30)** days of entry on all parties to the actions combined, on the Civil Court of the City of New York County of Queens and at the time of filing of the Notes of Issue, upon the Clerk of the Trial Term office of the Supreme Court of the State of New York, County of

Queens; and it is further

ORDERED, that the Clerk of the Civil Court of the City of New York County of Queens, upon being served with a copy of this Order with Notice of Entry and payment of any required fees, shall transfer all papers filed under Index number 016170/2021 to the Clerk of the Supreme Court of the State of New York, County of Queens.

The foregoing constitutes the decision and Order of this Court.

Dated: November 15, 2021



Hon. Chereé A. Buggs, JSC