

**Rakhimov v Edge Limo Inc.**

2024 NY Slip Op 34178(U)

November 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 502772/2021

Judge: Kerry J. Ward

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Supreme Court of the State of New York  
County of Kings

Index Number 502772/2021  
Seq. 001  
Calendar No. 44

P R E S E N T:

HON. KERRY J. WARD,  
A.J.S.C.

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Part 3

**NYSCEF Docs. Numbered**

ABDULMANSUR RAKHIMOV,  
*Plaintiff,*

Notice of Motion/Order to Show Cause and Affidavits Annexed	<u>34-47</u>
Answering Affidavits	<u>48</u>
Replying Affidavits	<u>49-50</u>
Exhibits	<u>Var.</u>
Other	<u>Var.</u>

-against-

EDGE LIMO INC., AND JOHN DOE (A FICTITIOUS NAME TO IDENTIFY A MOTORIST DESCRIBED IN THE COMPLAINT HEREIN),

*Defendant(s).*

Upon the papers before the Court, and having heard oral argument,

It is hereby ORDERED as follows:

Plaintiff Abdulsansur Rakhimov’s motion for summary judgment pursuant to CPLR § 3212 as to the issue of liability against defendants Edge Limo Inc., and John Doe is hereby GRANTED to the extent as provided herein.

Pursuant to CPLR § 3212, plaintiff Rakhimov moves for (1) summary judgment as to the issue of liability against defendants Edge Limo Inc. (hereinafter, “Edge”), and John Doe; (2) finding plaintiff free of fault; (3) striking defendant Edge Limo Inc.’s affirmative defenses as to plaintiff’s comparative fault; and (4) striking defendant Edge Limo Inc.’s Answer for their repeated, willful, and contumacious failure to provide the information of the operator of the

subject Nissan motor vehicle, defendant John Doe, and for their failure to produce him for examination before trial. Defendant Edge Limo, Inc. opposes the motion in its entirety.

### **Background and Procedural History**

Plaintiff contends that the two-vehicle subject accident occurred on September 18, 2020, at around 1:00pm in the intersection of 5th Avenue and 46th Street, in Brooklyn, New York, between a Nissan motor vehicle operated by defendant John Doe and owned by defendant Edge, and an electric scooter operated by plaintiff Rakhimov. On the date of the accident, defendant Edge was the registered owner of the Nissan, and rented it to an individual, defendant John Doe on a weekly basis.

Plaintiff avers he was operating his scooter in the bike lane. In the intersection, plaintiff initially observed the Nissan stopped on Fifth Avenue, by the intersection on 46th street, facing the opposite direction of travel from plaintiff. Plaintiff contends that the Nissan's turn signal was activated, indicating that the operator intended to make a lefthand turn on 46th Street. Plaintiff averred he was in the bike lane and crossed the intersection at a speed of five to ten miles per hour with a steady green light for his traffic lane when the accident occurred. He contends that he was struck in the rear by the Nissan motor vehicle operated by defendant John Doe, with the driver's sideview mirror coming into contact with plaintiff's back, causing him to fall off the moving scooter. After striking plaintiff from the rear, the Nissan left the scene of the accident. Plaintiff saw the Nissan's license plate number, as did an eyewitness who wrote down the plate number on a piece of paper and provided it to plaintiff. Plaintiff thereafter provided this information to the responding Police Officers, who generated a Motor Vehicle Accident Report and identified Edge as the owner of the Nissan (Exhibit H, NYSCEF Doc. 45).

Defendant Edge produced Edge Limo's corporate representative, Abdul Rub (hereinafter "Rub"), for deposition on February 14, 2024 (Edge Limo Inc. EBT, NYSCEF Doc. 42). Rub alleged that he personally inspected the vehicle when defendant John Doe brought it back to the company's shop and found zero damage to the vehicle that would be reflective of any accident occurring. During his deposition, Rub identified the operator of the subject vehicle as Carlos Aguilar and stated Aguilar's phone number for the record. Rub stated that it is the "custom and practice" of Edge to keep a copy of the driver's license of individuals renting their vehicles. He further stated that he believed that they still maintained a copy of Aguilar's driver's license, but he was unsure if they were still in possession of the rental agreement signed by Aguilar and the "title-page" that contained additional information about the driver. Rub stated that Aguilar has not rented a vehicle from Edge since 2020, the last vehicle he rented was the subject Nissan, and that they have not been in contact with him since then.

Nowhere in the deposition does Rub indicate the date of the vehicle inspection. Furthermore, these statements from Rub, corporate representative, are in direct contradiction to those provided by the defense in response to plaintiff's discovery demands. The defense also did not provide sworn statements from an individual with personal knowledge of the alleged events.

### *Outstanding Discovery Issues*

This lawsuit was commenced on February 1, 2021. On January 6, 2023, plaintiff filed a Notice to Produce,

"The full and accurate name and mailing address of the individual who was operating the 2015 Nissan motor vehicle bearing New York registration tag/ license plate T742847C, VIN # 1N4AL3AP3FC463983 on September 18, 2020, at or near the intersection of 5th Avenue and 46th Street, in Brooklyn, New York, and came into contact with the Plaintiff's body."

On January 23, 2023, defendant Edge filed their response to the demand, stating that, “Defendant attorneys are not in possession of such records but reserve the right to provide same should that information become available.”

A Final Pre-Note Order dated February 5, 2024, and signed by Judge Leon Ruchelsman, directed the deposition of the Nissan operator, defendant John Doe, to be held on February 14, 2024. This Order further directed Plaintiff to file a Note of Issue on or before May 10, 2024, and also provided: “Pursuant to CPLR 3126, failure to strictly comply with this final order may result in an appropriate sanction upon further motion for same.” (Final Pre-Note Order, NYSCEF Doc. 25). The motor vehicle operator was not presented for deposition on February 14, 2024.

As aforementioned, the EBT for Rub occurred on February 14, 2024. On February 19, 2024, plaintiff filed a Post-Examination Before Trial (EBT) Demand for Discovery and Inspection, requesting that defendant Edge provide plaintiff with a copy of the driver’s license of Carlos Aguilar, the rental agreement between Edge and Aguilar, the “title-page” with additional information about the driver, and the name of the transportation company that employed Carlos Aguilar.

On February 20, 2024, defendant Edge filed a Notice of Rejection in response to plaintiff’s demand, stating that, “Defendant attorneys are not in possession of such records but reserve the right to provide same should that information become available.” This is in contradiction to Rub’s deposition testimony.

On May 10<sup>th</sup>, 2024, in compliance with the Final Pre-Note Order, plaintiff filed a Note of Issue and Certificate of Readiness along with an Affirmation of Compliance, which confirms that there are no outstanding requests for discovery, there has been a reasonable opportunity to complete the foregoing proceedings, all other relevant witness information, party statements and

medical records, reports and/or authorizations available have been fully exchanged, and the case is ready for trial. The Affirmation of Compliance also states that non-party discovery may proceed post Note of Issue. (Exhibit F, NYSCEF Doc. 43).

In *Schneider v. Melmarkets Inc.*, the Supreme Court, Appellate Division, held that an owner was not obligated to produce for deposition a former employee who was no longer under its control (*Schneider v. Melmarkets Inc.*, 289 A.D.2d 470, 735 N.Y.S.2d 601 [2001]). In the instant action, defendant Edge was partially in compliance with plaintiff's discovery demands. The failure to produce John Doe aka Carlos Aguilar, however, does not warrant striking defendant's Answer, as the driver was no longer in defendant Edge's control. Thus, the branch of plaintiff's motion requesting the Court strike defendant Edge's Answer for their repeated, willful, and contumacious failure to provide the information of the operator of the subject Nissan motor vehicle, defendant John Doe, and for their failure to produce him for examination before trial is hereby DENIED.

### *Summary Judgment*

Pursuant to CPLR 3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018]). The motion for summary judgment must also "show that there is no defense to the cause of action" (*Id.*). The party moving for summary judgment must make a prima facie showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law (CPLR § 3212 [b]; see *Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004]). In deciding a summary judgment motion, the court does not

make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012]). Once a prima facie showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

In *Lebron v. Mensah*, a scooter driver brought an action against a taxi driver and taxi owner to recover for personal injuries he allegedly sustained in a collision with the taxi. The Appellate Court held that, “the plaintiff established his prima facie entitlement to judgment as a matter of law by demonstrating that the defendant driver violated Vehicle and Traffic Law § 1141 when he made a left turn directly into the path of the plaintiff’s scooter when it was not reasonably safe to do so, and that this violation was the sole proximate cause of the accident. In opposition to the motion, the defendants failed to raise a triable issue of fact” (*Lebron v. Mensah*, 161 A.D.3d 972, 974, 76 N.Y.S.3d 219, 221 [2018]). As the Court discussed in *Lebron*, Vehicle and Traffic Law § 1141 states that, “The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle...so close as to constitute an immediate hazard (N.Y. Veh. & Traf. Law § 1141 [McKinney]). Moreover, the court in *Lebron* found that defendant driver’s deposition testimony only raised “a feigned issue of fact which was insufficient to defeat the motion,” thus failing to rebut plaintiff’s prima facie case. (*Id.*)

Similarly in the instant case, plaintiff demonstrated a prima facie entitlement to summary judgment by presenting sworn testimony that he did not contribute to or create the motor vehicle accident by way of any negligence on the part of plaintiff. Defendant failed to provide sworn statements from an individual with personal knowledge. Rub merely refers to unsworn

statements allegedly made by the driver of the vehicle. No sworn statements from the driver are provided. This is not sufficient to rebut plaintiff's prima facie case, and presents a "feigned" issue of fact. As defendant Edge failed to raise a triable issue of fact, plaintiff's motion for summary judgment is hereby GRANTED, and the Court finds plaintiff free of fault. Defendant Edge Limo Inc's affirmative defenses as to plaintiff's comparative fault are stricken.

Plaintiff's motion is GRANTED in part and DENIED in part as stated herein:

Plaintiff has made a prima facie showing that they are entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact. Thus, plaintiff's motion for summary judgment as to liability against defendants is GRANTED, and the Court finds plaintiff free of fault. Defendant Edge's affirmative defenses are hereby stricken. The trial of this action is to proceed on the issue of damages only.

The branch of plaintiff's motion requesting to strike defendant Edge's Answer is DENIED.

This hereby constitutes the Decision and Order of the Court.

DATED: November 25, 2024

ENTER:

*KW*

HON. KERRY J. WARD, A.J.S.C.

Hon. Kerry J. Ward, A.J.S.C.