

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Heaney v. Kahn

2020 NY Slip Op 01333 (App. Div. 2020) · No. 2019-00778 · Decided February 26, 2020

SUMMARY

The Appellate Division, Second Department, reversed an order granting the defendant summary judgment in a personal-injury action arising from a bicycle collision with a vehicle exiting a parking lot. The court held that the defendant failed to establish prima facie that the vehicle's presence on the sidewalk was merely a condition or occasion of the accident and not a proximate cause.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Leonard B. Austin, J.P.; Robert J. Miller, J.; Joseph J. Maltese, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	February 26, 2020
DOCKET	2019-00778
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting the defendant's motion for summary judgment dismissing their personal-injury complaint.
STANDARD OF REVIEW	De novo review of the grant of summary judgment; the appellate court determines whether the movant established prima facie entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Jamie Heaney, Jamie Heaney's husband, suing derivatively v. Adam Kahn

TOPICS

- negligence
- proximate cause
- summary judgment
- personal injury
- appellate procedure

PRACTICE AREAS

negligence

personal injury

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant established prima facie entitlement to summary judgment by showing that he was not at fault in the bicycle-vehicle accident.
2. Whether the defendant established that the presence of his vehicle on the sidewalk merely furnished the condition or occasion for the accident and was not a proximate cause.

HOLDINGS

1. The defendant failed to establish prima facie that he was not at fault in the happening of the accident; therefore, summary judgment dismissing the complaint was improper.
2. The defendant failed to establish prima facie that the presence of his vehicle on the sidewalk merely furnished the condition or occasion for the accident and was not one of its causes.

KEY QUOTATIONS

“A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident” ([*1])

“There can be more than one proximate cause of an accident” ([*1])

“the defendant failed to establish, prima facie, that the presence of his vehicle on the sidewalk merely furnished the condition or occasion for the occurrence of the event but was not one of its causes” ([*1])

FACTUAL BACKGROUND

Jamie Heaney was operating a bicycle on a sidewalk in Rockville Centre when she collided with Adam Kahn's vehicle, which was exiting a parking lot. The vehicle had entered the sidewalk and stopped immediately before the impact. Heaney and her husband brought claims for personal injuries and derivative damages.

PROCEDURAL HISTORY

Jamie Heaney and her husband commenced an action for personal injuries and derivative damages after Heaney's bicycle collided with the defendant's vehicle as it exited a parking lot. The Supreme Court, Nassau County, granted the defendant's motion for summary judgment dismissing the complaint. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

CASES CITED

- Boulos v Lerner-Harrington, 124 AD3d 709
- Gezelter v Pecora, 129 AD3d 1021, 1021-1022

- Cox v Nunez, 23 AD3d 427
- Burnett v Reisenauer, 107 AD3d 656
- Derdiarian v Felix Contr. Corp., 51 NY2d 308, 314-315
- Liquori v Brown, 172 AD3d 1354, 1355
- Sheehan v City of New York, 40 NY2d 496, 503
- Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853

OPINION

PER CURIAM.

Heaney v Kahn (2020 NY Slip Op 01333) Heaney v Kahn 2020 NY Slip Op 01333 Decided on February 26, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 26, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LEONARD B. AUSTIN, J.P.

ROBERT J. MILLER JOSEPH J. MALTESE BETSY BARROS, JJ. 2019-00778 (Index No. 610843/17) [*1] Jamie Heaney, et al., appellants, v Adam Kahn, respondent. Alan W. Clark & Associates, LLC, Westbury, NY, for appellants. Sette & Apoznanski (Russo & Tambasco, Melville, NY [Yamile Al-Sullami], of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Nassau County (Randy Sue Marber, J.), entered December 26, 2018. DECISION & ORDER The order granted the defendant's motion for summary judgment dismissing the complaint. ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is denied.

The plaintiff Jamie Heaney (hereinafter the plaintiff) alleges she was operating a bicycle on a sidewalk when she collided with the defendant's vehicle, which was attempting to exit from a parking lot in Rockville Centre.

The plaintiff, and her husband suing derivatively, commenced this action against the defendant. The Supreme Court granted the defendant's motion for summary judgment dismissing the complaint, and the plaintiffs appeal. "A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident" (Boulos v Lerner-Harrington, 124 AD3d 709; see Gezelter v Pecora, 129 AD3d 1021, 1021-1022).

"There can be more than one proximate cause of an accident" (Cox v Nunez, 23 AD3d 427; see Burnett v Reisenauer, 107 AD3d 656), and the issue of proximate cause is generally one for the

jury (see *Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 314-315; *Liquori v Brown*, 172 AD3d 1354, 1355).

Here, the defendant's vehicle had pulled out from a parking lot and came to a stop immediately prior to the impact. The defendant failed to establish, *prima facie*, that the presence of his vehicle on the sidewalk merely furnished the condition or occasion for the occurrence of the event but was not one of its causes (see generally *Sheehan v City of New York*, 40 NY2d 496, 503).

Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint regardless of the sufficiency of the plaintiffs' opposition papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). AUSTIN, J.P., MILLER, MALTESE and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court