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**IMMUNITY - NEW YORK**

## Nair v. City of New York

**Supreme Court, Appellate Division, Second Department, New York - December 12, 2018 - N.Y.S.3d - 2018 WL 6519192 - 2018 N.Y. Slip Op. 08492**

Motor vehicle operator brought action against city and others to recover damages for personal injuries plaintiff allegedly suffered as result of city police's failure to place flares on roadway near collision site. T

he Supreme Court, Queens County, awarded summary judgment in favor of city and denied plaintiff's motion for leave to renew opposition to motion for summary judgment. Plaintiff appealed.

The Supreme Court, Appellate Division, held that:

- Plaintiff did not have special relationship with city, and
- Purported expert statement that plaintiff originally submitted as affirmation could serve as basis for motion for leave to renew, where plaintiff cured original deficiency by submitting the document as a sworn affidavit.

responding officers' purported instructions to tow truck driver did not constitute an assumption by the city of affirmative duty to act on the plaintiff's behalf, and plaintiff did not rely on officers' purported instructions to him.

Purported expert statement from retired police officer, which trial court did not consider as part of plaintiff's opposition to defendant's motion for summary judgment, since plaintiff submitted the statement as affirmation rather than sworn affidavit, properly served as basis of plaintiff's motion for leave to renew opposition, where plaintiff cured original deficiency by submitting the document as a sworn affidavit.

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