

Asante v Asante

2013 NY Slip Op 33145(U)

October 31, 2013

Sup Ct, New York County

Docket Number: 403318/2010

Judge: Geoffrey D. Wright

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

JUDGE GEOFFREY D. WRIGHT

PRESENT: _____
Justice

PART 62

Index Number : 403318/2010
ASANTE, EMMA O.
vs.
ASANTE, PRINCE
SEQUENCE NUMBER : 003
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 003

The following papers, numbered 1 to 4, were read on this motion to/for Re-argue

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2, 3</u>
Replying Affidavits _____	No(s). <u>4</u>

Upon the foregoing papers, it is ordered that this motion is decided in accordance
with the annexed hereto decision

* This case is transferred to a non-
city Part *

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
NOV 12 2013
NEW YORK
COUNTY CLERK'S OFFICE


GEOFFREY D. WRIGHT
AJSC

Dated: 10/21/13

_____, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----X
EMMA O. ASANTE,

Plaintiff,

Index # 403318/2010

-against-

DECISION

PRINCE ASANTE, THE CITY OF NEW YORK,
NEW YORK CITY POLICE DEPARTMENT and
GREYLI GIL

FILED

Defendants.

Present:

NOV 12 2013

Hon. Geoffrey D. Wright

-----X
NEW YORK Acting Justice Supreme Court
COUNTY CLERKS OFFICE

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of this Motion/Order for summary judgment.

PAPERS

NUMBERED

Notice of Motion and Affidavits Annexed.....	_____ 1, _____
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits.....	_____ 2, 3 _____
Replying Affidavits.....	_____ 4 _____
Exhibits.....	_____
Other.....cross-motion.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendant, the city of New York, New York City Police Department and Greyli Gil (“The City”) move for an Order pursuant to CPLR 2221 granting re-argument and subsequently granting summary judgment dismissing the claims of Plaintiff, Emma Asante and cross claims of Co-Defendant Prince Asante. The City’s motion to reargue is granted. Upon re-argument The City’s motion for summary judgment is granted.

This is a personal injury action arising from a motor vehicle accident between a vehicle operated by Prince, and a police vehicle owned by Co-defendants’ the City of New York and New York City Police Department, and operated by Co-defendant Greyli Gil on Sunday, October 11, 2009, at the intersection of 8th Avenue and West 124th Street, New York, New York. At the time of the accident, Plaintiff was a front seat passenger in the vehicle being driven by her husband, Prince.

It is well settled that a motion for re-argument pursuant to CPLR 2221(d)(2) “addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (internal citations omitted).” *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]; *Ito v 324 East 9th Street Corp.*, 49 AD3d 816, 817 [2d Dept 2008]; *Mangine v Keller*, 182 AD2d 476 [1st Dept 1992].

The City argues that this Court’s March 19, 2013 decision was based on an oversight regarding VTL §1104(b) because a police vehicle engaged in an emergency operation is not required to use lights or sirens in order to be afforded the reckless standard. In addition they argue that Officer Gil’s conduct is legally afforded the broad discretion of VTL §1104(b)’s reckless standard as long as she was engaged in an emergency operation which they argue does not require she implement lights /and/or sirens.

Plaintiff and Co-defendant, Prince Asante, oppose the motion on the grounds that the City is not entitled to the reckless standard because there is a question of fact as to whether Officer Gil was engaged in an emergency situation at the time of the alleged accident. Second they argue there is a question of fact as to whether Officer Gil acted with reckless disregard for the safety of others at the time she entered the subject intersection.

In my decision dated March 19, 2013 denying the City’s motion for summary judgment, I wrote in part that

“If Officer Gil was involved in an emergency situation and had appropriately activated the vehicle’s lights and sirens prior to the collision, she would have received broad discretion to disregard a wide range of normal traffic rules, provided that she did not act in reckless disregard of the safety of others.”

VTL §1104 governs the conduct of police officers when operating an authorized emergency vehicle in an emergency operation. Specifically VTL § 1104 in part states:

VTL §1104. Authorized emergency vehicles

(a) The driver of an authorized emergency vehicle, when involved in an emergency operation, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

1. Stop, stand or park irrespective of the provisions of this title;
2. Proceed past a steady red signal, a flashing red signal or a stop sign, but only

after slowing down as may be necessary for safe operation;

3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing directions of movement or turning in specified directions.

However, 1104(c) states:

(c) Except for an authorized emergency vehicle operated as a police vehicle or bicycle, the exemptions herein granted to an authorized emergency vehicle shall apply only when audible signals are sounded from any said vehicle while in motion by bell, horn, siren, electronic device or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp so that from any direction, under normal atmospheric conditions from a distance of five hundred feet from such vehicle, at least one red light will be displayed and visible.

VTL § 114-b specifies two separate police activities fitting the definition of an emergency: "pursuing an actual or suspected violator of the law" and "responding to . . . a police call." The definition of "a police call" is sufficiently broad to encompass responding to a radio call from a police dispatcher or directly from another police officer, without any regard for how the Police Department categorizes calls or whether the officers actually believe the call to be an emergency. See *Criscione v City of New York*, 97 NY2d 152, 157-58, 762 N.E.2d 342, 736 N.Y.S.2d 656 (2001); see also *McCarthy v City of New York*, 250 AD2d 654, 655, 673 N.Y.S.2d 160 (2nd Dep't 1998).

Officer Gil was not required to active lights or sirens because she was riding in a police vehicle responding to an authorized emergency. Officer Gil testified that a call came over the radio that specified a code of "10-85" which means an officer needs help/assistance. She testified that when she got in the car she activated activated her lights and sirens. Additionally, she stated that when she reached the red signal at issue in this case, she came to a complete stop in front of it. She stated she saw the vehicle in which Plaintiff was a passenger, stop before she began to drive again in an attempt to go around. In addition to her lights and sirens, she also honked her horn several times. Plaintiff argues that she did not see any emergency lights but heard "just the bang" and that she saw the police car after the impact. Moreover, Co-Defendant, Prince Asante, did not mention the absence of lights in the accident report. He stated that he struck the police vehicle and that he did not hear the siren. A witness to the accident, Mr. Upshaw, stated that he saw the police vehicle with lights and sirens on and that the driver (Co-defendant, Prince Asante) was not paying attention. A preliminary investigation done by Sgt.


Taveras concluded that Officer Gil entered the intersection with her lights and sirens on and that the driver of the vehicle did not see or hear her and that Officer Gil was not at fault.

VTL § 1104 does not shield Officer Gil from liability where there is evidence that there was a reckless disregard of the safety of others in the operation of the police vehicle. Under VTL § 1104(e), the manner in which a police officer operates his or her vehicle in responding to an emergency situation may not form the basis of civil liability to an injured third party unless the officer acted in "reckless disregard" for the safety of others. *Meade v Chestnut*, 53 AD3d 645, 863 N.Y.S.2d 446 (2nd Dep't 2008). In this case, Officer Gil did not act with reckless disregard as she stopped at the red light before proceeding and she had her lights and siren activated although not required to have them on. In addition, Plaintiff stated she did not see the police vehicle before the accident only after impact.

Accordingly, the City's motion for re-argument is granted and upon re-argument, the City's motion for summary judgment dismissing the dismissing the complaint and all cross-claims against them is granted.

This constitutes the decision and order of the Court.

Dated: October 31, 2013


GEOFFREY D. WRIGHT

AISC
JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court

FILED
NOV 12 2013
NEW YORK
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