

**Metz v Morganteen**

2014 NY Slip Op 33085(U)

August 29, 2014

Supreme Court, Putnam County

Docket Number: 2913/12

Judge: Lewis J. Lubell

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PLC 10/20/14 @ 9:30 AM

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK COUNTY OF PUTNAM

-----X ALEXIA METZ,

Plaintiff,

-against -

JAMES MORGANTEEN, ALLISON MORGANTEEN and THOMAS JANSEN,

Defendants.

-----X LUBELL, J.

DECISION & ORDER

Index No. 2913/12

Sequence No. 1-3

Motion Date 6/2/14

The following papers were considered in connection with Motion Sequence #1 by defendant Thomas Jansen for an Order pursuant to CPLR Section 3212, dismissing plaintiff's verified complaint and any and all cross-claims on the grounds that there are no triable issues of fact; directing entry of judgment in favor of defendant; Motion Sequence #2 by defendants Morganteen for an Order pursuant to CPLR 3212 dismissing the complaint and all cross claims; and Motion Sequence #3 by plaintiff for an Order granting partial summary judgment on the issue of liability, and determining that the plaintiff was not comparatively negligent; denying the motion and cross-motion by defendants for summary judgment on the issue of liability and for such other and further relief as this Court deems just and proper:

PAPERS	NUMBERED
NOTICE OF MOTION/AFFIRMATION/MEMORANDUM/EXHIBITS A- J	1
NOTICE OF CROSS MOTION/AFFIRMATION/EXHIBITS A-J	2
NOTICE OF CROSS MOTION/AFFIRMATION/EXHIBITS A-H	3
AFFIRMATION IN OPPOSITION	4
REPLY AFFIRMATION	5
REPLY AFFIRMATION	6

Plaintiff, Alexia Metz, brings this personal injury action in connection with alleged injuries sustained in a two-vehicle motor vehicle accident which took place on December 13, 2009, at

approximately 11:40 A.M. in the southbound lanes of Interstate 684, approximately .10 miles from State Route 35. At the time of the accident, plaintiff was a belted, rear passenger in a vehicle owned and operated by defendant Thomas Jansen ("Jansen") which was struck in the rear by a vehicle being driven by defendant Allison Morganteen and which is owned by her father, defendant James Morganteen (the "Morganteen Defendants"). Following the initial impact, the Jansen vehicle spun clockwise while the Morganteen vehicle spun counterclockwise only to collide a second time and then come to rest.

### **Motion Sequence #1**

The motion by defendant Jansen for an Order pursuant to CPLR §3212 dismissing plaintiff's verified complaint and any and all cross-claims against him on the grounds that there are no triable issues of fact is granted.

At the outset, Jansen has come forward with a sufficient showing in admissible form establishing his entitlement to judgment in his favor as a matter of law. Among other things, Jansen establishes that approximately one mile before the accident and upon observing that the prevailing rainy conditions had turned to sleet, he reduced the speed of his vehicle from 60 mph to 50 mph in this 65 mph zone. At no time prior to the accident had his vehicle slid or slipped on the roadway. At the time of the collision, Jansen was lawfully and prudently operating his vehicle in the center lane of the roadway whereupon his vehicle was hit in the rear by the Morganteen vehicle after defendant Allison Morganteen lost control upon traversing "black ice" in the right lane.

In response to Jansen's prima facie showing, neither the Morganteen Defendants nor plaintiff have come forward with a sufficient showing in admissible form establishing that there exists material questions of fact regarding same. Jansen's admission that the accident took place approximately one minute or one mile after he observed sleet accumulating on his windshield and that, during this time, he had observed that a vehicle had driven off the road and that there was a line of cars pulled over under an overpass does not compel a different result. There is no indication that Jansen was not otherwise in full control of his vehicle prior to being struck in the rear by defendant Morganteen, nor is there any suggestion that he caused or contributed to the initial or secondary collisions or otherwise contributed to plaintiff's injuries by the manner in which he operated his vehicle either prior to, during or after the collisions. Any argument to the contrary is mere speculation.

Thus, the Court concludes that Jansen has established a prima facie showing of entitlement to summary judgment in his favor as to

all claims asserted against him and, in response, a material question of fact has not been properly raised regarding same. Motion granted.

### **Motion Sequence #2**

The common-law emergency doctrine "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided the actor has not created the emergency" (Lifson v. City of Syracuse, 17 N.Y.3d 492, 497, 934 N.Y.S.2d 38, 958 N.E.2d 72, quoting Caristo v. Sanzone, 96 N.Y.2d 172, 174, 726 N.Y.S.2d 334, 750 N.E.2d 36). "This is not to say that an emergency automatically absolves one from liability for his conduct. The standard then still remains that of a reasonable [person] under the given circumstances, except that the circumstances have changed" (Ferrer v. Harris, 55 N.Y.2d 285, 293, 449 N.Y.S.2d 162, 434 N.E.2d 231; see Hendrickson v. Philbor Motors, Inc., 101 A.D.3d 812, 813, 954 N.Y.S.2d 898; Williams v. City of New York, 88 A.D.3d 989, 990, 931 N.Y.S.2d 656).

(Levy v. Braman Motorcars, 119 AD3d 530 [2d Dept 2014]).

Even upon viewing the facts in a light most favorable to the Morganteen Defendants, the Court finds that whether an emergency existed and whether defendant Allison Morganteen reasonably responded to it presents questions of facts, as is ordinarily the case upon one's assertion of the "emergency doctrine" (*id.* citing Williams v. City of New York, 88 A.D.3d 989, 990). Neither the quick onset of sleet nor asserted nature of the ice upon which the Morganteen vehicle allegedly lost control ("black ice") sufficiently temper the worsening weather conditions, below freezing temperatures and continued precipitation confronting defendant Allison Morganteen prior to the accident such as would warrant a granting of the Morganteen Defendants' motion for summary judgment as a matter of law. The material questions of fact pertaining to the emergency doctrine are appropriate for and will be presented to a jury for consideration.

### Motion Sequence #3

Plaintiff's motion for an Order granting partial summary judgment on the issue of liability against defendant Jansen is denied, the Court having already granted summary judgment dismissing the complaint and any cross-claims against Jansen (see Sequence #1, supra). Plaintiff's motion for summary judgment is also denied as against the Morganteen Defendants for the reasons hereinabove stated in connection with the Court's denial of the Morganteen Defendants' motion for summary judgment in their favor. Whether an emergency existed and whether defendant Allison Morganteen reasonably responded to it presents questions of facts precluding summary judgment in favor of plaintiff or the Morganteen Defendants (see Sequence #2, supra).

That aspect of plaintiffs' motion seeking summary judgment in favor of plaintiff and against the Morganteen Defendants on the issue of comparative negligence is granted, conditioned on a finding of liability against the Morganteen Defendants. No material question of fact has been raised as to plaintiff's comparative negligence as the belted, rear passenger of a vehicle that was struck in the rear by the another vehicle.

Based upon the foregoing, it is hereby

ORDERED, that all causes of action and cross-claims be and are hereby dismissed as against defendant Thomas Jansen; and, it is further

ORDERED, that, the Morganteen Defendants' motion for summary judgment is hereby denied; and, it is further

ORDERED, that plaintiff's motion is granted to the extent herein indicated; and, it is further

ORDERED, that plaintiff and the Morganteen Defendants are directed to appear before the Court for a Pretrial Conference at 9:30 A.M. on October 20, 2014.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Carmel, New York  
August 29, 2014

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