

**Abraham v City of New York**

2015 NY Slip Op 32409(U)

November 9, 2015

Supreme Court, Queens County

Docket Number: 700995/14

Judge: Kevin J. Kerrigan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED  
NOV 10 2015  
COUNTY CLERK  
QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN  
Justice

Part 10 COUNTY CLERK  
QUEENS COUNTY

-----X  
John Abraham,

Index  
Number: 700995/14

Plaintiff,

- against -

Motion  
Date: 10/21/15

The City of New York, New York City  
Police Department and Frank Crowley,

Motion  
Cal. Number: 1

Defendants.

Motion Seq. No.: 3

-----X

The following papers numbered 1 to 8 read on this motion by plaintiff for summary judgment.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits.....	1-4
Affirmation in Opposition.....	5-6
Reply.....	7-8

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by plaintiff for summary judgment, pursuant to CPLR 3212, on the issue of liability is granted.

Plaintiff allegedly sustained injuries as a result of a motor vehicle collision between the vehicle operated by him and the NYPD vehicle operated by Police Officer Frank Crowley at the intersection of Rockaway Beach Boulevard and Beach 41<sup>st</sup> Street in Queens County at 6:27 p.m. on October 16, 2013. The undisputed facts are that plaintiff was traveling eastbound on Rockaway Beach Boulevard approaching the intersection of Beach 41<sup>st</sup> Street. There is no traffic control device or stop sign controlling the movement of traffic on Rockaway Beach Boulevard at this intersection. Beach 41<sup>st</sup> Street is a one-way street going northbound. There is a stop sign controlling traffic on Beach 41<sup>st</sup> Street at the intersection of Rockaway Beach Boulevard.

Officer Crowley was traveling eastbound on Beach Channel Drive in heavy traffic, and upon reaching the intersection of Beach 41<sup>st</sup>

Street, made a right turn the wrong way onto Beach 41<sup>st</sup> Street and proceeded to travel southbound on Beach 41<sup>st</sup> Street toward the intersection of Rockaway Beach Boulevard. The undisputed deposition testimony of plaintiff is that plaintiff saw that there were no vehicles approaching the stop sign on Beach 41<sup>st</sup> Street and proceeded into the intersection, when Officer Crowley's vehicle, traveling in the wrong direction on Beach 41<sup>st</sup> Street entered the intersection from the wrong direction and struck plaintiff's vehicle, which was in the intersection. Plaintiff did not see Officer Crowley's vehicle until the moment of impact. Officer Crowley acknowledged in his deposition that he did not have his lights or siren activated at any time, and plaintiff's testimony that he did not hear a horn is undisputed.

The City does not dispute that Officer Crowley, by driving the wrong way down a one-way street, violated Vehicle and Traffic Law §1127(a) and that by failing to yield the right of way to plaintiff who had proceeded into the intersection, violated Vehicle and Traffic Law §1142(a). A violation of the Vehicle and Traffic Law constitutes negligence per se, unless defendant can demonstrate that his violation was justified (see Martin v Herzog, 228 NY 164 [1920]). Officer Crowley's undisputed violation of these sections of the Vehicle and Traffic Law established a prima facie case of liability, thus shifting the burden to the City of coming forward with evidence to demonstrate that his conduct was justified under the circumstances (see id.). The City has failed to do so.

In opposition, the City contends that there is an issue of fact as to whether plaintiff's cause of action meets the heightened reckless disregard threshold necessary for the imposition of civil liability applicable to an emergency vehicle engaged in an emergency operation, as defined by Vehicle and Traffic Law §114-b, under the standards set forth in Vehicle and Traffic Law § 1104.

Pursuant to Vehicle and Traffic Law § 1104(b) and (c) and as defined in Vehicle and Traffic Law §§ 101 and 114-b, an authorized emergency vehicle involved in an emergency operation may disregard certain traffic laws, such as driving in the wrong direction and proceeding through a stop sign, if safety precautions are taken. (see, Criscione v City of New York, 97 NY2d 152 [2001]; Baines v City of New York, 269 AD2d 309 [2000]). A driver of an authorized emergency vehicle is not relieved of the obligation to drive with "due regard for the safety of all persons" nor does the statute protect reckless conduct (Vehicle and Traffic Law § 1104[e]). Thus, a police officer engaged in an emergency operation will be provided with a qualified exemption from civil liability for injuries to a third party "unless the officer acted in reckless disregard for the safety of others" (Saarinen v Kerr, 85 NY2d 494,

501 [1994]). Moreover, a finding of reckless disregard requires proof that the officer has intentionally committed "an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow" (Saarinen v Kerr, at 501; Puntarich v County of Suffolk, 47 AD3d 785 [2008]). A momentary lapse of judgment is insufficient to attach liability to the driver of the emergency vehicle. (Szczerbiak v Pilat, 90 NY2d 553 [1994]).

Officer Crowley, by his own admission, was not involved in an emergency operation. Officer Crowley testified in his deposition that on the date of the accident he and his partner received a call to respond to a complainant at 54-41 Almeda Avenue. They arrived at approximately 4:30 p.m. A police Sergeant and Lieutenant subsequently arrived. The complaint was by the victim of an alleged attempted abduction. When Crowley arrived, the complainant was in no danger and was safely in her grandmother's apartment. No description of a suspect was ever put out and Crowley never notified the detective squad or the special victim's unit. After approximately three hours, at 6:10 p.m., either the Sergeant or the Lieutenant instructed Crowley to drive to the 101<sup>st</sup> Police Precinct to pick up one Captain Valerga and bring him back to 54-41 Almeda Avenue. It was during his drive to the 101<sup>st</sup> Precinct to pick up Captain Valerga that the accident occurred. Crowley testified it was not necessary to use lights or siren because there was no "imminent emergency", as he was merely traveling back to pick up an executive officer. Moreover, one Lieutenant Camillo, who prepared the police accident report, noted therein that Crowley was on routine patrol at the time of the accident, and that he was not responding to a code signal, pursuing a violator or complying with station house directives.

Officer Crowley was clearly not involved in an emergency operation, but was, concededly, acting as a mere chauffeur on his way to the Police Precinct to pick up a police Captain. Thus, there is no issue presented as to whether his conduct in driving down a one-way street in the wrong direction into an intersection and further failing to yield the right of way to another vehicle lawfully in the intersection, in clear violation of the Vehicle and Traffic Law, was governed by the heightened recklessness standard applicable to emergency vehicles engaged in emergency operations.

Thus, plaintiff has made out a prima facie showing that Crowley violated Vehicle and Traffic Law §§1127(a) and 1142(a) by proffering uncontested testimony that Crowley drove the wrong way down the street and into the intersection without stopping or yielding the right of way to plaintiff's vehicle that was in the intersection and struck plaintiff's vehicle after it had entered

the intersection and, thus, that such violations constituted negligence per se, and has further established prima facie that such negligence was the sole proximate cause of the accident (see Jenkins v. Alexander, 9 AD 3d 286 [1<sup>st</sup> Dept 2004]; Vehicle and Traffic Law §1142 [b]).

The burden thereupon shifted to the City to establish any issues of fact so as to preclude the granting of summary judgment (see, Zuckerman v. City of New York, 49 NY 2d 557 [1980]). The City has failed to meet its burden. Its only opposition consists of its unmeritorious argument that the recklessness standard applies in this case. It does not dispute that Crowley violated the aforementioned sections of the Vehicle and Traffic Law and has failed to proffer any evidence or even allege that Crowley was comparatively negligent (see, Balanta v. Stanlaine Taxi Corp., 307 AD 2d 1017 [2<sup>nd</sup> Dept 2003]); Carpio v. Leahy Mechanical Corp., 30 AD 3d 554 [2<sup>nd</sup> Dept 2006]); Diasparra v. Smith, supra).

A driver who has the right of way at an intersection is entitled to rely upon another vehicle to obey traffic signals requiring it to yield and has no duty to anticipate that another driver will disobey traffic laws and to execute evasive action to avoid being struck by the other vehicle that might fail to stop (see Jenkins v Alexander supra; Cenovski v. Lee, 266 AD 2d 424 [2<sup>nd</sup> Dept 1999]). In our case, plaintiff, although he had the right of way and no stop sign or traffic light controlling his movement, testified that he looked to see whether any cars were approaching the stop sign on Beach 41<sup>st</sup> Street and, seeing none, proceeded into the intersection. The Court notes that although a driver has the duty to see what there is to be seen, plaintiff was not required to look in the opposite direction of the intersecting one-way street to see if someone was traveling in the wrong direction and at a velocity evincing a lack of intention to stop.

Thus, summary judgment is granted to plaintiff on the issue of liability.

Dated: November 9, 2015

  
\_\_\_\_\_  
KEVIN J. KERRIGAN, J.S.C.

**FILED**  
NOV 10 2015  
COUNTY CLERK  
QUEENS COUNTY