

Amico v Talal
2017 NY Slip Op 33507(U)
August 9, 2017
Supreme Court, Westchester County
Docket Number: Index No. 70699/14
Judge: Linda S. Jamieson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Disp _____ Dec x Seq. No. 1 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON
-----X
BRIAN J. AMICO,

Plaintiff,

-against-

Index No. 70699/14

DECISION AND ORDER

MICHAEL D. TALAL and JOSEPH M. FALLONE,

Defendants.

-----X

The following papers numbered 1 to 3 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation and Exhibits	1
Affirmation in Opposition	2
Reply Affirmation	3

Defendant Fallone bring his motion seeking summary judgment dismissing him from the action. Defendant Talal has defaulted in the action.

The facts in this action, to the extent that they are known, are simple. Plaintiff and defendant Fallone, among others, were out riding their motorcycles on September 14, 2014. Plaintiff was the lead motorcycle, with Fallone behind him at some distance. Defendant Talal cut them off, causing nearly all of the motorcyclists to sustain injuries. Talal was ticketed for the incident.

Plaintiff testified at his deposition that he sustained two impacts: the first was when he hit Talal's car and the second was when one of the motorcycles hit him. Plaintiff testified that he did not see the second impact. Plaintiff speculated that of the motorcyclists, Fallone "was probably one of the first ones I saw because the way he slid. . . ." Plaintiff further testified at his deposition that the motorcyclists behind him could not have seen the car that cut him off, stating that it was "impossible," because he "had a hard time seeing" it, and it was "a split second decision. . . ."

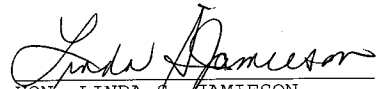
Fallone contends that the above makes clear two things - that plaintiff is not sure who actually hit him, and that it was actually an emergency such that the emergency doctrine applies. "Under the emergency doctrine, when an actor is faced with a sudden and unexpected circumstance which leaves little 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. Although the existence of an emergency and the reasonableness of the response to it generally present issues of fact, those issues may in appropriate circumstances be determined as a matter of law." *Vitale v.*

Levine, 44 A.D.3d 935, 936, 844 N.Y.S.2d 105, 106 (2d Dept. 2007).

As in Vitale, "the evidence submitted in support of the defendants' motion for summary judgment was sufficient to establish that the defendant driver was faced with a sudden and unforeseen occurrence not of her own making All of these facts leading to the accident amounted to an emergency situation." *Id.*, 44 N.Y.S.2d at 106. In opposition, all that plaintiff states is that the emergency doctrine is a question of fact for a jury, and that "there remains the question as to whether the defendant's inattention contributed to the occurrence." The Court disagrees. As plaintiff himself was unsure who hit him, and unequivocally testified that it was an emergency, the Court finds that "plaintiff's speculative and conclusory assertions failed to raise a triable issue of fact." *Miloscia v. New York City Bd. of Educ.*, 70 A.D.3d 904, 905, 896 N.Y.S.2d 109, 111 (2d Dept. 2010). Nor does plaintiff contend that Fallone was following too closely, or was otherwise breaching any of the rules of the road. There is, thus, no reason not to grant the motion and dismiss defendant Fallone from the action.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
August 9, 2017


 HON. LINDA S. JAMIESON
 Justice of the Supreme Court

To: Grace & Grace
Attorneys for Plaintiff
360 Underhill Ave.
Yorktown, NY 10598

LaRose & LaRose
Attorneys for Defendant
510 Haight Ave.
Poughkeepsie, NY 12601