

**Park v Flynn**

2019 NY Slip Op 30438(U)

February 25, 2019

Supreme Court, New York County

Docket Number: 153583/2016

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 153583/2016

ALBERT PARK,

MOTION DATE 01/09/2019

Plaintiff,

MOTION SEQ. NO. 003

- v -

JOHN FLYNN, TARIKV DESTA

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 77, 78, 79, 81, 82, 83

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is for ORDERED that defendant, John J. Flynn's motion for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability in favor of defendant and against co-defendant, Tarikv K. Desta. Defendant Flynn's motion contends that on March 14, 2016, defendant Flynn was traveling in his vehicle in the left Queens-bound left lane of the 59th Street/Queensboro Bridge in the County, City and State of New York, when co-defendant Desta rear-ended defendant Flynn's vehicle and that defendant Flynn bears no liability for the accident at issue. Defendant has made out a prima facie case of negligence, and the burden shifts to co-defendant to raise a triable issue of fact (See Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]; see also Zuckerman v City of New York, 49 NY2d 557, 560 (1980)).

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the

burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure ... to do [so]” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

“A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident” (*Baez v MM Truck and Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dep’t 2017]).

Both Co-defendant and plaintiff oppose the motion. Co-defendant’s opposition alleges that defendant Flynn’s vehicle came to a sudden stop and caused the accident at issue. Plaintiff’s opposition adopts the arguments and proof incorporated in co-defendant’s opposition with the exception of the emergency doctrine.

Under the emergency doctrine a triable issue of fact may exist as to whether the conduct of a defendant may be excused due to an emergency situation (*Caristo v Sanzone*, 96 NY2d 172, 174 [2001] quoting *Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327 [1991] [finding that “the common-law emergency doctrine which ‘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”]).

Here, defendant Flynn testified that he was stopped for ten seconds before his vehicle was struck from behind by co-defendant. The emergency doctrine applies to those “faced with a sudden and unexpected circumstance which leaves little or no time for thought...” (*id.*). Ten

seconds is ample time for the driver of a vehicle to have “time for thought, deliberation or consideration” (*id.*). Further, were the Court to disregard defendant’s assertion that he was stopped for ten seconds, and conclude that defendant came to a sudden stop short, the law would still permit summary judgment on the issue of liability. It is well established that the claim that a vehicle stopped suddenly, standing alone, is insufficient to raise a triable issue of fact (*Cruise v Lise*, 123 AD3d 514 [1st Dep’t]).

Pursuant to Vehicle and Traffic Law 1229(a) “[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.” Thus, the Court finds that co-defendant and plaintiff have failed to raise an issue of fact. Defendant John J. Flynn’s motion for an order finding that he bears no liability for the accident at issue is granted.

Accordingly, it is

ORDERED that the motion of John J. Flynn’s motion on the issue of liability against co-defendant Tarikv K. Desta, for an order that defendant John J. Flynn bears no liability for the alleged occurrence is granted; and it is further

ORDERED that the complaint is dismissed in its entirety against defendant John J. Flynn, with costs and disbursement to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant;

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption read as follows:

