

**Suarez v Mahmud**

2019 NY Slip Op 30770(U)

March 25, 2019

Supreme Court, New York County

Docket Number: 150099/2016

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 22**

-----X

JEANNETTE SUAREZ,  
  
Plaintiff,

**INDEX NO.** 150099/2016

- v -

**MOTION DATE** 01/30/2019

MD MAHMUD, JAMPA PHUNTSOK, PATRICIA HAYNES,  
EMILIO NEGRON, SULEIMAN NEGASH

**MOTION SEQ. NO.** 006

Defendant.

**DECISION AND ORDER**

-----X

HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 96, 97, 98, 99, 100, 101, 102, 103, 109, 110, 111, 113, 114, 115

were read on this motion to/for

**JUDGMENT - SUMMARY**

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Upon the foregoing documents, it is ORDERED that defendant Jampa Phuntsok’s motion for summary judgment for an order to dismiss plaintiff Jeannette Suarez’s Complaint and all cross-claims against said defendant is granted.

The accident at issue occurred on the Ed Koch Bridge in the county, city and state of New York when plaintiff’s stopped vehicle was struck in the rear by a taxi owned by defendant Suleiman Negash and operated by defendant MD Mahmud. The accident was part of a chain collision which also included defendant Patricia M. Haynes who stopped her vehicle in the right lane of the bridge after her vehicle got a flat tired. This caused defendant Emilio Negrón to stop his vehicle in the right lane as well. It was here that plaintiff’s vehicle was struck from behind by defendant Mahmud’s vehicle and propelled into the Negrón vehicle. Once defendant Mahmud’s vehicle struck the Negrón vehicle, defendant Mahmud and defendant Negash’s vehicle struck

defendant Phuntsok’s vehicle. Defendants MD Mahmud and Suleiman Negash oppose the motion.

“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]). Violation of the Vehicle and Traffic Law (“VTL”) constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep’t 2009]).

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 Phuntsok was in no position to take steps to reasonably foresee or avoid defendant Mahmud from striking his vehicle. Defendant has made a prima facie showing of entitlement to summary judgment. Defendant submits the deposition of plaintiff who testified

that she saw defendant Mahmud move out of its lane and strike defendant Phuntsok's vehicle (Exh D at 51, ¶70).

Defendant has demonstrated that defendant Phuntsok did nothing to cause the subject accident. Further, the Court notes that it granted plaintiff's motion for summary judgment on the issue of liability as against defendant Mahmud and defendant Negash in a Decision/Order dated January 30, 2019. Defendants' opposition fails to raise an issue of fact. Defendant's motion to dismiss plaintiff's Complaint and all cross claims as against Defendant Phuntsok is granted.

Accordingly, it is

ORDERED that defendant's motion for summary judgment for a finding that defendant Jampa Phuntsok is free from liability and to dismiss plaintiff's Complaint and any cross-claims against defendant is granted; and it is further

ORDERED that the Complaint is dismissed in its entirety as against defendant Jampa Phuntsok, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants Md Mahmud, Patricia M. Haynes, Emilio Negrón, and Suleiman Negash; 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; and it is further

ORDERED that counsel for defendant Jampa Phuntsok serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that within 20 days of entry, counsel for defendant Jampa Phuntsok shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

3/25/2019  
DATE

  
ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE