

**Paranac v Tyrone**

2019 NY Slip Op 31244(U)

May 3, 2019

Supreme Court, New York County

Docket Number: 151257/2016

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  
NEW YORK COUNTY**

**PRESENT: HON. ADAM SILVERA PART IAS MOTION 22**

*Justice*

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**INDEX NO. 151257/2016**

MARY PARANAC,

**MOTION DATE 12/13/2018**

Plaintiff,

**MOTION SEQ. NO. 002**

- v -

FRANCIS TYRONE, SOLOW REALTY & DEVELOPMENT  
COMPANY LLC, 60TH STREET DEVELOPMENT LLC

**DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for

**JUDGMENT - SUMMARY**

Before the Court is defendant Tyrone Francis’s motion, motion sequence 002 for an Order pursuant to CPLR §3212 granting summary judgment in favor of defendant to dismiss the Complaint and any and all cross-claims against defendant and or an Order to dismiss plaintiff Mary E. Paranac’s Complaint on the grounds that the injuries allegedly sustained by plaintiff do not satisfy the “serious injury” requirement as defined by Insurance Law § 5102(d).

**BACKGROUND**

The suit at bar stems from a sequence of motor vehicle accidents which occurred on January 1, 2015, near the intersection of 60<sup>th</sup> Street and York Avenue in the County, City, and State of New York, and allegedly led to the serious injury of plaintiff. The motion at bar involves the second accident in which defendant Francis’ vehicle struck plaintiff’s vehicle.

**DISCUSSION**

**Summary Judgment (Liability)**

Defendant’s motion for summary judgment on the issue of liability is denied. “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]).

Here, defendant fails to establish that he was not negligent in the operation of his vehicle. Defendant’s motion hinges on 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”]).

Defendant claims that his vehicle slipped on black ice which caused the accident; however, a rear car that slips on ice does not raise an issue of fact and is not a nonnegligent excuse for an accident (*Williams v Kadri*, 112 Ad3d 142 [1<sup>st</sup> Dept 2013] [finding that defendant

should have left enough room between vehicles given the current weather conditions]). Thus, the branch of defendant's motion which seeks a ruling in his favor on the issue of liability for the underlying accident is denied.

### **Summary Judgment (Serious Injury)**

Defendant's motion for summary judgment, pursuant to CPLR 3212, against plaintiff on the issue of "serious injury" as defined under Section § 5102(d) of the Insurance Law is granted. "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]).

In order to satisfy their burden under Insurance Law § 5102(d), a plaintiff must meet the "serious injury" threshold (*Toure v Avis Rent a Car Systems, Inc.*, 98 NY2d 345, 352 [2002] [finding that in order establish a prima facie case that a plaintiff in a negligence action arising from a motor vehicle accident did sustain a serious injury, plaintiff must establish the existence of either a "permanent consequential limitation of use of a body organ or member [or a] significant limitation of use of a body function or system"]).

Defendant alleges that plaintiff has failed to demonstrate the existence of a "serious injury" as defined under Section 5102(d) of the Insurance Law. In support of their motion defendant submits the report of Dr. Edward Crane and affirmation of Dr. Daniel J. Feuer (Mot, Exh I & J). Dr. Crane examined plaintiff on April 5, 2018 and opined that no objective evidence

existed of any orthopedic residuals from the accident at issue (*id.*, Exh I). The Court finds Dr. Crane's report to be conclusory and makes no mention of normal degrees of range of motion and merely states what that of plaintiff is. However, the affirmation of Dr. Feuer properly demonstrates that on Aril 16, 2018 when he examined her, that plaintiff had a normal range of motion of the cervical and lumbar spine (*id.*, Exh J). Dr. Feuer concludes with a reasonable degree of medical certainty, that plaintiff has no objective neurological disability or neurological permanency and is able to engage in full active employment as well as full activities of daily living without restriction (*id.*). Thus, defendant has made a prima facie showing of entitlement to summary judgment and the burden shifts to plaintiff to raise an issue of fact.

In opposition, plaintiff fails to raise an issue of fact. Plaintiff merely states that there exist triable issues of facts and attaches medical reports as to "range of motion, limitation, and the continue disability of the plaintiff, by her treating doctors" (Aff in Op, ¶ 5). Plaintiff's doctor reports do not indicate what the normal range of motion is and are conclusory. The Appellate Division, First Department, has consistently held that "[t]he report of the doctor...is deficient because he...failed to indicate what the normal range of motion would be" (*Nagbe v Minigreen Hacking Group*, 22 AD3d 326, 327 (1<sup>st</sup> Dep't 2005)). Defendants has satisfied their burden and absent a proper showing of serious injury or issue of fact from plaintiff, defendant's motion for summary judgment on the issue of "serious injury" as defined by Insurance Law § 5102(d) is granted.

Accordingly, it is

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that within 30 days of entry, defendant shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

5/3/19  
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