Rodolph v City of New York
2020 NY Slip Op 33129(U)
September 25, 2020
Supreme Court, New York County
Docket Number: 155740/2014
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART 52**
Justice

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RENAY RODOLPH,

Plaintiff,

- v -

THE CITY OF NEW YORK, P.O. MUHITUL AMBIA, LUIS REYES GARCIA

Defendant.

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INDEX NO. 155740/2014

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 78, 79, 80, 81, 83, 84

were read on this motion to/for DISMISSAL

Upon the foregoing documents, the motion by the City of New York and P.O. Muhitul Ambia for summary judgment is granted.

This action arises out of a motor vehicle collision that occurred on June 16, 2013, at or near the intersection of 8th Avenue and West l40th Street, in the City, County and State of New York. Plaintiff was the rear seat passenger of a vehicle driven by defendant Luis Reyes Garcia. Defendants the City of New York and the P.O. Muhitul Ambia ("City") now move for summary judgement, pursuant to CPLR 3212. Plaintiff and co-defendant oppose the instant motion.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851, [1985]). Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving

party (*Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395[1957]). Once movant has met his initial burden on a motion for summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). It is well settled that issue finding, not issue determination, is the key to summary judgment (*Rose v Da Ecib USA*, 259 AD2d 258 [1st Dept 1999]). When the existence of an issue of fact is even fairly debatable, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12 [1960]).

VTL §1104 provides in pertinent part:

> (a) The driver of an authorized emergency vehicle, when involved in an emergency operation, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
>
> (b) The driver of an authorized emergency vehicle may: 1. Stop, stand or park irrespective of the provisions of this title; 2. Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;3. Exceed the maximum speed limits so long as he does not endanger life or property; 4. Disregard regulations governing directions of movement or turning in specified directions.
>
> (c) Except for an authorized emergency vehicle operated as a police vehicle or bicycle, the exemptions herein granted to an authorized emergency vehicle shall apply only when audible signals are sounded from any said vehicle while in motion by bell, horn, siren, electronic device or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp so that from any direction, under normal atmospheric conditions from a distance of five hundred feet from such vehicle, at least one red light will be displayed and visible.

The statute permits the operator of an emergency authorized vehicle to proceed past red traffic lights, exceed the speed limit and disregard regulations regarding the direction of traffic,

as long as a certain safety precautions are observed including the sounding of audible signals while the vehicle is in motion (*Saarinen v Kerr*, 84 NY2d 494 [1994]). However, "[t]he privileges afforded by the statute are circumscribed by section 1104(e), which provides that [t]he foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others'" (*Id.* at 499-500).

Based on the Court's review of the record before it, it is readily apparent that Officer Ambia was responding to an emergency, that of an officer needing assistance, at the time of the subject crash, thus triggering the application of Vehicle and Traffic Law (VTL) § 1104. Moreover, Officer Ambia gave uncontroverted testimony that he slowed his vehicle before reaching the intersection, and that his lights and sirens were on at the time of the crash. Plaintiff's testimony that she did not see the police vehicle prior to the accident does not controvert that fact. Finally, the plaintiff's argument as to the mangling of the vehicles leading to a question of fact as to the speed of the police vehicle is conjecture without expert testimony, which has not been provided. Based on the foregoing, it is hereby

ORDERED that the motion of defendants City of New York and P.O. Muhitul Ambia for summary judgment is granted and the complaint and all cross-claims are dismissed in their entirety as against said defendants, 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 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; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (access*ible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

9/25/2020
DATE

LYLE E. FRANK, J.S.C.
HON. LYLE E. FRANK
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:	X	INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE