

Vengochea-Bermud v City of New York
2021 NY Slip Op 30834(U)
March 16, 2021
Supreme Court, New York County
Docket Number: 151449/2017
Judge: J. Machelle Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

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INDEX NO. 151449/2017

GUIDO VENGOCHEA-BERMUD,
Plaintiff,

MOTION DATE 12/01/2020

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, NEW YORK POLICE
DEPARTMENT, NEW YORK CITY FIRE DEPARTMENT,
NATHAN REISMAN

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49,
50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for JUDGMENT - SUMMARY.

Pending before the court is a motion filed by plaintiff seeking an order: (a) pursuant to
CPLR §3212, entering partial summary judgment on behalf of plaintiff on the issue of liability;
and (b) pursuant to CPLR §3211(b), dismissing the affirmative defenses of defendants
(collectively, the "City") as to culpable conduct and assumption of risk. Upon the foregoing
documents, this motion is DENIED.

The function of the court when presented with a motion for Summary Judgment is one of
issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d
395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1st Dept.
1985]). 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 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York
University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a

drastic remedy that deprives a litigant of his or her day in court. 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 the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 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 N.Y.2d 395 [NY Ct. of Appeals 1957]).

Here, the plaintiff argues that defendants caused “a pedestrian knockdown crash” on July 30, 2016, at the intersection of E. Houston Street and Pitt/Avenue C in New York, New York when defendant REISMAN (the “Driver”) drove his unmarked FDNY vehicle through a red light, over the speed limit, without the right of way, and struck plaintiff, a bicyclist, in the crosswalk. Plaintiff argues that “there is no dispute at all” in this case that the Driver did not have his lights or sirens on when they drove through a red light, and did not, therefore, have the legal right of way.

Plaintiff also argues that the City is not entitled to the exemptions and heightened “reckless disregard” standard afforded by Vehicle and Traffic Law (“VTL”) §1104 since the Driver’s vehicle did not have any lights or sirens activated at the time of the crash and, defendants are to be judged under an ordinary negligence standard. Plaintiff further argues that the Driver’s failure to obey speed limits, stop at the red light and yield the right-of-way to plaintiff at the intersection means the City violated a number of provisions of the VTL, including §1110 (Obedience to and required traffic-control devices), §1111 (Traffic-control signal indications), §1146 (Drivers to Exercise Due Care”), §1180 (Basic Rule and Maximum Limits) and §1212 (Reckless driving). Plaintiff argues that violations of these sections of the VTL serve as a predicate for summary judgment on liability against the City. Plaintiff additionally argues that the City cannot provide evidence disputing that they violated these sections of the VTL, or any evidence


demonstrating that plaintiff was in any way at fault for the crash and, therefore, the City's affirmative defenses of comparative fault and assumption of risk should be dismissed.

Corporation Counsel, which represents all the defendants, opposes. In stark contrast to the facts presented by plaintiff, the City argues the following: That at the time of the incident, the Driver was responding to an emergency distress call regarding a pedestrian who was struck at Christie Street and Delancey Street. The Driver had his lights and sirens on in emergency mode, and was driving at approximately 25 miles per hour. As he approached Avenue C and East Houston Street, the Driver had the green light and slowed down to ensure that it was clear to proceed. Nevertheless, as he proceeded through the intersection, his vehicle suddenly came in contact with a bicyclist. The City argues that this version of the events is also on the Driver's Employee Statement Form and the MV-104 in this incident.

As stated above, the function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination, and summary judgment will only be granted if there are no material, triable issues of fact. Here, all of the critical facts, including which vehicle had the right of way; whether the Driver was obeying the speed limit; whether the Driver had his emergency lights on; and whether the Driver had his emergency sirens on, are all in dispute. Given this, summary judgment is inappropriate here.

Finally, if the Driver's version of events is established as true, then the City's affirmative defenses of comparative fault and assumption of risk are potentially meritorious. Accordingly, plaintiff's request to dismiss these defenses is denied.

Given the above, this motion is DENIED in its entirety.

<u>3/16/2021</u> DATE		 _____ J. MACHEILLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE