

**Alvarez v City of New York**

2022 NY Slip Op 31313(U)

April 21, 2022

Supreme Court, New York County

Docket Number: Index No. 159274/2018

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 62

*Justice*

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MELISSA ALVAREZ,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT  
OF PARKS AND RECREATION, CAESAR GARNER

Defendants.

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INDEX NO. 159274/2018

MOTION DATE 02/07/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

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

This is an action for personal injuries allegedly sustained by plaintiff MELISSA ALVAREZ on October 5, 2017 in connection with a motor vehicle collision which occurred on 2nd Avenue at or near its intersection with East 119th Street, in the County, City and State of New York.

Pending before the court is a motion wherein plaintiff seeks an order, pursuant to CPLR 3212:

- (a) granting plaintiff partial summary judgment against defendants THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION and CAESAR GARNER (collectively, the "City"), on the issue of liability, upon the grounds that there are no triable issues of fact and that, as a matter of law, the plaintiff is entitled to judgment against such defendants;

- (b) dismissing defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct of the plaintiff; and
- (c) upon granting summary judgment as aforesaid, setting this action down for a trial on the assessment of damages as against said defendant.

According to plaintiff, she is entitled to summary judgement because defendant's vehicle reversed and hit the vehicle in which plaintiff was driving. Specifically, plaintiff alleges that on the date of the accident, plaintiff's car was fully stopped at a red light. Directly in front of plaintiff's vehicle was a vehicle that was owned by defendant the City Of New York and operated by defendant Caesar Garner (the "City Driver") in his capacity as an employee of defendant New York City Department of Parks and Recreation. Plaintiff claims that the City Driver, inexplicably and suddenly, drove his vehicle in reverse, and that his vehicle struck the plaintiff's vehicle, causing the accident. In support of this argument, plaintiff submitted the sworn statement of Diane Robles, (NYSCEF Document #38), who claims to have witnessed the accident. In her statement, Ms. Robles states, in part:

Prior to the accident, I had seen the woman driving the Honda sedan traveling in the southbound bus lane toward E. 119th Street with her right turn directional on. I then saw the Honda stop directly behind the pickup truck which was also stopped at the intersection of E. 119th Street for the red light. As both drivers were waiting for the traffic light to turn green, I saw the person driving the pickup truck suddenly start to back up without any warning and run into the front of the Honda with the back of his vehicle. As a result, it would have been impossible for the woman driving the Honda, which was stopped, to get out of the path of the pickup truck, which suddenly began backing up without any warning, and struck the front of her vehicle

In stark contrast to the events as alleged by plaintiff, the City offers a completely different version of the facts. The City argues that it was the City vehicle that was at a complete stop at a red traffic light, when plaintiff's vehicle, suddenly and without warning, moved forward and struck the City vehicle from behind. In support of this argument, the City submitted the sworn Affidavit of the City Driver, which states, in part:

4. While driving southbound on Second Ave. I stopped for a red traffic light at East 119th Street. I was the first vehicle at the stop. My vehicle came to a stop before the painted stop line on the road. After I came to a complete stop. Several seconds later, I was hit from the rear by a 2015 Honda sedan with New York license plate #HAP 4230, which was operated by Melissa Alvarez.

5. After coming to a complete stop for the red light at E. 119th St, I did not put my vehicle in reverse and back up. After coming to a complete stop, my right foot remained on the brake pedal consistently with firm pressure. My foot remained on the brake even when I was hit from the rear, which caused the truck to move forward and make a screeching sound. My trunk was moved a few feet forward as a result of the impact from the rear. After coming to a complete stop for the red light at East 119th Street, I did not move my vehicle, until my truck moved forward from the impact. My vehicle had been stopped before the painted stop line on the roadway, after the impact from the rear, the front of my vehicle was over the stop line.

### Analysis and Conclusions of Law

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 [Sup. Ct. App. Div. 1<sup>st</sup> 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 [Sup. Ct. App. Div. 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]).


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 demonstrate the absence of any material issues of fact, and failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Alvarez v Prospect Hosp., 68 NY2d 320 [N.Y. Ct. of Appeals 1986]).

Here, summary judgment is inappropriate, as plaintiff and the City each present starkly contradictory versions of the facts. Similarly, the City's affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct of the plaintiff, cannot be dismissed, as there remain issues of fact as to whether plaintiff's conduct contributed to the accident. *See also* Berger v New York City Hous. Auth., 82 AD3d 531 (Sup. Ct. App. Div. 1st Dept 2011) (where the Supreme Court, Appellate Division, held that existence of genuine issues of material fact precluded summary judgment in case involving a five-car accident).

Accordingly, it is hereby

**ORDERED** that this motion is DENIED in its entirety.

This is the Decision and Order of the court.

<u>4/21/2022</u> DATE		 _____ J. MACHELIE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE