

Jean-Francois v City of New York

2022 NY Slip Op 31708(U)

May 26, 2022

Supreme Court, New York County

Docket Number: Index No. 159007/2020

Judge: Judy H. Kim

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

EDY JEAN-FRANCOIS,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY FIRE DEPARTMENT

Defendant.

-----X

INDEX NO. 159007/2020

MOTION DATE 04/19/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion for JUDGMENT - SUMMARY

Plaintiff Edy Jean-Francois commenced this negligence action on October 23, 2020 to recover for personal injuries allegedly sustained on February 16, 2020. Plaintiff's complaint alleges that on that date he was driving past a stationary vehicle owned by defendant New York City Fire Department when an object fell from that vehicle onto the windshield of his car (NYSCEF Doc. No. 1 [Complaint at ¶¶26-27]). Plaintiff now moves, pursuant to CPLR §3212, for an order granting his partial summary judgment as to liability.

In support of this motion, plaintiff submits an affidavit stating that:

On February 16, 2020, I was traveling in my vehicle on Lafayette Street at or near Spring Street in New York, New York. Prior to the happening of an accident, I was traveling in the right lane on Lafayette Street near 253 Lafayette Street which is the address for Ladder company. As I was passing in front of the firehouse, I observed a firetruck parked near the curb and in front of the firehouse. I observed that the firetruck had its ladder in the up position. As I passed the firetruck in the right lane, I heard a loud boom and felt an impact to my vehicle on the right side. After the incident occurred, a white male, approximately 5 ft 9", with black hair, who was dressed in a white shirt and blue shorts, approached my vehicle to see if I was ok. He identified himself as Lieutenant McNamara and he advised that he was the

Lieutenant for Ladder 20 located at 253 Lafayette Street. He further advised that they were performing a drill and in the process of performing said drill, an object fell off of the ladder. He provided me with a piece of paper that had his name and number on it and which is attached herewith. As a result of my vehicle being struck, I was caused to sustain serious injuries.

(NYSCEF Doc. No. 19 [Jean-Francois Affirm.]).

In opposition¹, defendants submit an affidavit from Lieutenant Ryan McNamara attesting that

On February 16, 2020, I was the Lieutenant on duty for Ladder Co. 20, located at 253 Lafayette Street, New York, New York 10013. On or around 11:00 am, myself and the FDNY firefighters assigned to Ladder Co. 20 were performing a routine safety apparatus drill for an FDNY vehicle at or near 253 Lafayette Street, New York, New York 10013. The FDNY vehicle was parked on the apron of the driveway for Ladder Co. and extended into the parking lane on Lafayette Street. Lafayette Street has two lanes of traffic traveling northbound and a parking lane on each side. There were approximately 5-10 orange safety cones at or near multiple points on Lafayette Street to warn drivers and pedestrians of the safety apparatus drill in progress. The orange safety cones were strategically placed around the FDNY vehicle to direct vehicles into the left lane of travel on Lafayette Street. While performing the safety apparatus drill, one (1) twelve-ounce snap hook was compromised when the ladder of the FDNY vehicle was extended and the twelve-ounce snap hook fell onto street level. I am unaware if the twelve-ounce snap hook caused any damage to the vehicle [...] Jean-Francois was traveling in or if the snap hook made contact with the right side of [...] Jean-Francois' vehicle.

(NYSCEF Doc. No. 23 [McNamara Aff. at ¶¶3-6]).

DISCUSSION

“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. Failure to make such prima facie showing requires a denial

¹ The Court is unpersuaded by plaintiff's argument that the Court must disregard defendants' opposition based upon defendants' failure to comply with Uniform Rules 202.8(a) and 202.8-g(b). Defendants have responded to plaintiff's statement of material facts, albeit belatedly (See NYSCEF Doc. No. 31) and, even discounting this late submission, the Court sees no prejudice to plaintiff in considering defendants' opposition (See Meserole Hub LLC v Rosenzweig, 71 Misc 3d 1222(A) [Sup Ct, Kings County 2021]; but see Amos Financial LLC v Crapanzano, 145 NYS 3d 366 [Sup Ct, Rockland County 2021]).

of the motion, regardless of the sufficiency of the opposing papers” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]). “On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (Sosa v. 46th Street Development LLC, 101 AD3d 490, 492 [1st Dept 2012]).

To establish his entitlement to summary judgment, plaintiff bears the burden to establish that: (1) defendant owed a legal duty to plaintiff; (2) defendant breached this duty; and (3) plaintiff suffered injuries as a proximate cause of said breach (See e.g. P.W.B. Enterprises, Inc. v Moklam Enterprises, Inc., 221 AD2d 184, 185 [1st Dept 1995]). Plaintiff argues that his affidavit satisfies these elements. The Court is not persuaded.

As a threshold matter, “New York courts generally have rejected dispositive reliance on affidavits submitted in support of summary judgment where [as here] the non-movant has not had the opportunity to depose the affiants” (Hughes v TSR, Inc., 2021 NY Slip Op. 30656[U], 15-16 [Sup Ct, New York County 2021] [internal citations omitted]). Even leaving this aside, plaintiff’s affidavit is insufficient to carry his burden on the instant motion, as factual lacunae exist which preclude summary judgment. Specifically, plaintiff’s affidavit does not state that the object that hit plaintiff’s car fell from defendants’ vehicle, a prerequisite to establish defendants’ liability, and instead leaves it to the Court to make the necessary inferential leap.

Moreover, to the extent plaintiff contends that Lieutenant McNamara’s statement recounted in his affidavit establishes that an object fell off the fire truck, such hearsay evidence is “insufficient to satisfy the movant’s burden of establishing a prima facie showing of entitlement to an award of summary judgment” (Wen Ying Ji v Rockrose Dev. Corp., 34 AD3d 253, 254 [1st Dept 2006] [plaintiff’s motion for partial summary judgment should not have been granted where “[t]he sole piece of evidentiary material offered by plaintiff ... was her own affidavit, detailing her

conversations with the landlord's doorman ... [which] was, in important respects, hearsay evidence”)].

In short, “[m]any important aspects of how the accident occurred are not clear from the ... evidence submitted by plaintiff” and “[t]he depositions of the parties is necessary to develop the relevant facts” (Gitman v Martinez, 139 AD3d 1175, 1176 [3d Dept 2016] [internal citations omitted]). To the extent plaintiff attempts to invoke the emergency doctrine and res ipsa loquitur in support of his motion it is not clear to the Court, on the minimal record before it, that these doctrines apply.

Accordingly, it is

ORDERED that plaintiff’s motion for summary judgment is denied without prejudice to renew after the completion of discovery; and it is further

ORDERED that defendant the City of New York is directed to serve a copy of this order with notice of entry on plaintiff as well as on the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 158M) within ten days from entry; and it is further

ORDERED that such service upon 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 (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the Clerk of the Court is directed to set this matter down for a preliminary conference in the DCM Part on the next available date.

This constitutes the decision and order of the Court.



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5/26/2022

DATE

JUDY H. KIM, 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