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| Bluemke v City of New York |
| 2022 NY Slip Op 32233(U) |
| June 28, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 155051/2021 |
| Judge: Leslie Stroth |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE STROTH PART 52

Justice

-----X
PAUL BLUEMKE,

Plaintiff,

- v -

THE CITY OF NEW YORK, ERIN MARKEVITCH

Defendant.
-----X

INDEX NO. 155051/2021

MOTION DATE 04/08/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff Paul Bluemke (Bluemke) moves pursuant to CPLR 3212 for summary judgment on the issue of liability against defendants Erin E. Markevitch (Markevitch) and the City of New York (the City). Markevitch works as a Detective Sergeant with the New York City Department of Finance's Bureau of Criminal Investigations. The subject accident occurred on Wantagh Avenue at or near the intersecting Street Sunrise Lane, in Nassau County. Allegedly, Markevitch's car, which was making an illegal U-turn while surveilling a criminal suspect, hit Bluemke's car. At the time of the accident, Markevitch was driving an unmarked Nissan that she alleges that she was assigned and operating on behalf of the New York City Sherriff's Office.

Bluemke commenced this action in May 2021. The complaint asserts two causes of action, the first cause of action for common law negligence and the second cause of action for negligent hiring, supervision, training, and retention of Markevitch. Bluemke now moves for summary judgment on the grounds that plaintiff bore no responsibility for the accident and that Markevitch was not responding to an emergency, so no heightened standard of care applies in this case. In support of its motion, plaintiff offers the property damage evaluation report for Bluemke's vehicle (Exhibit D), color photos depicting

the damage to Bluemke's vehicle (Exhibit E), an affidavit by Bluemke (Exhibit L), a copy of the certified police report regarding the incident (Exhibit M), and supervisor's evaluation report of Markevitch dated June 29, 2020 (Exhibit N).

Defendants oppose Bluemke's motion, arguing that Markevitch was driving an emergency police vehicle and was engaged in an emergency operation when she attempted an illegal U-turn to get a better view of a suspect under surveillance. Defendants maintain that Bluemke does not sufficiently establish that Markevitch's conduct rose to the level of reckless disregard for the safety of others, which is the standard of care applicable to an emergency vehicle responding to an emergency.

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). As such, 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. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *see also Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of issues of fact. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990), citing *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 (1st Dept 1989).

Pursuant to Vehicle and Traffic Law § 1104, the driver of an authorized emergency vehicle is granted a qualified privilege to disregard certain rules governing the operation of vehicles when involved in an emergency operation, as long as the driver does not do so with reckless disregard for the safety of others. Every police vehicle is considered an authorized emergency vehicle within the meaning

of Vehicle and Traffic Law § 1104. *See* Vehicle and Traffic Law § 101. Authorized emergency vehicles are considered to be engaged in emergency operations when pursuing an actual or suspected violator of the law. *See* Vehicle and Traffic Law § 114-b. While engaged in such response or pursuit, a police vehicle may “disregard regulations governing directions of movement or turning in specified directions.” Vehicle and Traffic Law § 1104(b)(4). Notably, the use of a siren or emergency lights is not required for police vehicles to obtain protection under this statute. *See Nikolov v Town of Cheektowaga*, 96 AD3d 1372, 1373 (2012), *see also Frezzell v City of New York*, 24 NY3d 213 (2014).

Bluemke argues that defendants were solely responsible for the accident, because Bluemke was driving under the speed limit and had no way of avoiding the accident. Therefore, Bluemke maintains that defendants were negligent as a matter of law. Defendants argue that Bluemke failed to demonstrate that Markevitch recklessly disregarded the safety of others, which is the appropriate standard of review for an authorized emergency vehicle engaged in an emergency operation.

However, plaintiff contends that there is no proof of an emergency occurring at the time of the accident, because Markevitch did not report the presence of an emergency to the police immediately after the accident nor did she include the existence of an emergency in her report following the accident. Defendants also maintain that there was no crime actively taking place when Markevitch attempted her U-turn, nor was there immediate threat to the life, health, or property of anyone in the area of the subject accident. Notably, plaintiff does not cite to any caselaw that expressly excludes rental cars, rented on behalf of the New York City Sheriff’s Office to be used for official purposes, from being considered an “emergency vehicle.” Vehicle and Traffic Law § 1104.

Defendants submit the affidavit of Markevitch as Exhibit B, and she clearly details the circumstances giving rise to the accident at issue and that she was acting in the scope of her employment when the accident occurred. Although Detective Markevitch’s vehicle was a rental car and not equipped

with police lights or sirens, it qualifies as an authorized emergency vehicle under the statute, because Markevitch operated it on behalf of the New York City Sheriff's Office. Furthermore, Markevitch's pursuit of a suspected violator of the law at the time of the accident qualifies as an emergency operation under Vehicle and Traffic Law § 114-b. Therefore, under VTL § 1104(b), Markevitch's alleged actions in attempting a U-turn qualify as a privileged action that is statutorily entitled to assessment under the reckless disregard standard.

Here, plaintiff's contention that the Markevitch was negligent is irrelevant as under the statute the relevant standard of care is not negligence, but, rather, recklessness. At this early stage, plaintiff has failed to demonstrate reckless disregard on the part of the Markevitch. The fact that Markevitch did not have sirens or emergency lights is not dispositive. Considered in the light most favorable to the City, the issue of whether Markevitch was reckless in her operation of the department vehicle remains as a question of fact for a jury. Therefore, it is

ORDERED that plaintiff's motion for summary judgment is denied, and it is further

ORDERED that counsel are directed to appear for a preliminary conference to be held via Microsoft Teams July 20, 2022 at 2:00 PM.

The foregoing constitutes the decision and order of the Court.

6/28/2022

DATE


LESLIE STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: