

Antoine v City of New York

2022 NY Slip Op 34167(U)

December 8, 2022

Supreme Court, New York County

Docket Number: Index No. 159825/2020

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

-----X

CHINELLE ANTOINE,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY FIRE DEPARTMENT, STEPHEN P NURNBERGER

Defendants.

-----X

INDEX NO. 159825/2020

MOTION DATE 05/17/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion for JUDGMENT - SUMMARY

Plaintiff commenced this action seeking damages for personal injuries allegedly sustained on March 21, 2020 when the United States Postal Service truck operated by plaintiff collided with the New York City Fire Department ambulance operated by defendant Stephen P. Nurnberger near the intersection of Broadway and 168th Street (NYSCEF Doc. No. 1 [Compl at ¶17]).

Plaintiff moves, pursuant to CPLR §3212, for partial summary judgment on the issue of liability as against all defendants. In support of her motion, plaintiff submits an affidavit attesting as follows:

On 3/21/2020 I was operating a vehicle that was struck by a vehicle operated by Stephen P. Nurnberger and owned by the City of New York and New York City Fire Department. The collision occurred at the intersection of Broadway and West 168th Street in the New York, New York ("the intersection"). The intersection is controlled by a traffic light. The vehicle I was situated in was proceeding Northbound on Broadway and the other vehicle was travelling on West 168th Street. The traffic light for our direction of travel was green and remained green until the impact. After I had entered the intersection, and was almost halfway through, I observed the other vehicle that was involved in the collision proceeding on West 168th Street. I only observed this vehicle a split second prior to the impact,

and it was coming toward my vehicle. I believed that the other vehicle would stop for the red light and so I continued through the intersection. My traffic light was still green. All of a sudden, and with no warning, the other vehicle struck my vehicle on the passenger side. The other vehicle did not have any sirens on, and the other vehicle never stopped at the red traffic light. Since I only observed the other vehicle a split second prior to impact, there was absolutely nothing that I could do to avoid the collision.

I have reviewed a video that was taken which depicted my accident. Please see video attached herewith as Exhibit "D". The video depicts a fair and accurate portrayal of the subject accident, intersection as well as the vehicles involved. In the video you can see that I am traveling Northbound on Broadway and the video confirms that the traffic light for my direction of travel was green and never changed to another color prior to the accident. You can see that the traffic light was red for the other vehicle and never changed to another color prior to the accident. The video shows that the other vehicle went through a steady red light and never stopped at any time for the red light. The video additionally shows that my vehicle had entered the subject intersection before the other vehicle.

(NYSCEF Doc. No. 24 [Chinelle Aff.] [emphasis added]). Plaintiff also submits the video of the collision referenced in her affidavit, which video was recorded from a dashboard camera inside of an automobile parked on Broadway on the opposite side of the subject intersection from the collision (NYSCEF Doc. No. 25).

Defendants oppose the motion and cross-move for summary judgment dismissing this action on the grounds that Nurnberger did not operate the ambulance with reckless disregard for the safety of others and therefore, pursuant to VTL §1104, defendants bear no liability. In connection with their opposition and cross-motion, defendants submit an affidavit from Nurnberger, attesting as follows:

On the morning of March 21, 2020, I was assigned shift from 8 am to 8 pm as an ambulance driver. My partner for that shift was Shadeed Ali. That morning we received a call for an emergency situation where the patient had difficulty breathing and was possibly COVID positive. When we arrived on the scene we confirmed that the patient was COVID positive, had difficulty breathing, and placed my patient on an oxygen tank, transported her into the ambulance, and began transporting her to Columbia Presbyterian hospital.

While I was transporting my patient to Columbia Presbyterian I eventually turned on to 168th Street and began driving westbound. 168 Street is two lane street, with two directions of traffic going east and west bound. On Broadway Avenue there are three lanes on each side of the median. On the side closest to where I was entering the intersection, there were two lanes of traffic going northbound, and one lane of traffic that was for making a left-hand turn on to 168 Street heading westbound. Fencing with green tarps placed over it was placed along the roadway between the eastern most lane on Broadway, partially obstructing my view of the roadway south of the intersection.

I remember that as I approached the intersection at 168th street and Broadway Avenue, my lights and sirens were active before I began to clear the intersection. The traffic signal was red, and I came to a brief stop before entering the intersection. I saw that on Broadway Avenue, the lane closest to me was clear, and saw that a vehicle in the middle lane heading northbound had come to a complete stop, allowing me to proceed through the intersection safely. My view was of the eastern most northbound lane of traffic on Broadway Avenue was obscured by fencing with a green tarp over it. When I entered the intersection, I was checking to make sure that there was no vehicle in the closest lane traveling northbound. After I began moving into the intersection, I saw a United States Postal Service truck enter the intersection. Immediately upon seeing the United States Postal Service truck I immediately applied the break to avoid the collision, however, the United States Postal Service truck sideswiped the front of my vehicle ...

(NYSCEF Doc. No. 33 [Nurnberger Aff. at ¶¶2-4] [emphasis added]).

DISCUSSION

“[T]he 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 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, 324 [1986] [internal citations omitted]).

Plaintiff’s motion and defendants’ cross-motion for summary judgment are denied.

Plaintiff contends that she is entitled to partial summary judgment on liability because her affidavit and the video of the collision establish that Nurnberger failed to obey a red light, in violation of Vehicle and Traffic Law (“VTL”) §§1110 and 1111(d)(1), which violation constitutes negligence per se (See e.g., Castro v Hatim, 174 AD3d 464, 465 [1st Dept 2019]). However, it is not clear at this juncture that this negligence standard applies.

Where, as here, the driver of an authorized emergency vehicle is involved in an emergency operation, that driver may “[p]roceed past a steady red signal ... after slowing down as may be necessary for safe operation” (VTL §1104[b][2]) as long as he or she “drive[s] with due regard for the safety of all persons” (VTL §1104[e]) including, as pertinent here, “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” (VTL §1104[c]). When the requirements of VTL §1104 are satisfied, this statute protects a driver from liability except where his or her actions exhibit a “reckless disregard for the safety of others” (VTL §1104[e]).

Plaintiff does not dispute that Nurnberger was driving an authorized emergency vehicle involved in an emergency operation but argues that VTL §1104 is inapplicable because she has established through her affidavit and video that the ambulance’s siren was off. The Court disagrees. Contrary to plaintiff’s claim, the video of the collision does not resolve this question. While the Court is unable to hear an ambulance siren in this video, this is not dispositive—little to no street noise is audible in this dashboard camera footage and, accordingly, it is possible that the ambulance’s siren was on but was not recorded by the dashboard camera’s microphone. Neither does plaintiff’s assertion in her affidavit that the siren was off, which is expressly contradicted by Nurnberger’s affidavit, resolve this issue. Given this unresolved question as to whether VTL §1104 applies, plaintiff’s motion for summary judgment must be denied.

Defendants’ cross-motion is also denied. To the extent that there appears to be no dispute that Nurnberger was driving an emergency vehicle in an emergency operation (i.e., transporting a sick or injured person under VTL §114-b), the outstanding question of fact as to whether the ambulance siren was on or off must be resolved before it can be determined whether VTL §1104’s “reckless disregard for the safety of others” standard applies to Nurnberger’s operation of the ambulance and, if it does, whether Nurnberger exhibited such reckless disregard.

Accordingly, it is

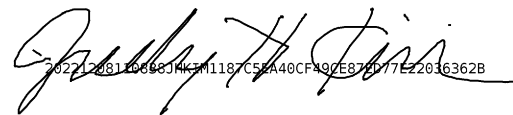
ORDERED that plaintiff’s motion for summary judgment is denied; and it is further

ORDERED that defendants’ cross-motion for summary judgment is denied; and it is further

ORDERED that within thirty days from the date of this decision and order, counsel for the City of New York shall serve a copy of this order, with notice of entry, on plaintiff as well as the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk’s Office (60 Centre St., Rm. 119); 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* (accessible at the “Efiling” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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HON. JUDY H. KIM, J.S.C.

12/8/2022

DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE