

Enoch Kuijeong Seo v City of New York

2023 NY Slip Op 30016(U)

January 3, 2023

Supreme Court, New York County

Docket Number: Index No. 153971/2019

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 52

Justice

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INDEX NO. 153971/2019
ENoch KUIJEONG SEO, MOTION DATE 04/05/2022
Plaintiff, MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, P.O. DANIEL COY DECISION + ORDER ON MOTION
Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for JUDGMENT - SUMMARY

The instant motion arises out of an action to recover for personal injuries sustained by plaintiff Enoch Kuijeong Seo (plaintiff) on July 13, 2018, when he was in a motor vehicle accident involving a New York City Police Department (NYPD) vehicle operated by Police Officer Daniel Coy (Officer Coy) at the intersection of Amsterdam Avenue and West 133rd Street, New York, NY. Officer Coy was allegedly responding to a radio call regarding the pursuit of a person with a firearm when he proceeded through a steady red light, driving over the double yellow lines to go around another vehicle stopped at said red light. It is undisputed that plaintiff was driving through the intersection with a steady green light and, at that time, the NYPD vehicle struck the passenger side doors of plaintiff's vehicle. Officer Coy testified that he did not see plaintiff's vehicle until the time of impact. See NYSCEF doc. no. 21, at 42, lines 8-10. Plaintiff testified that he did not see the NYPD vehicle, hear any sirens, or see any flashing lights before impact, but did see flashing lights after impact. See NYSCEF doc no. 20, at 18, lines 2-25; 19, lines 1-4.

Defendants the City of New York and Officer Coy (together, the City) now seek an order pursuant to CPLR 3212 granting summary judgment in their favor. Plaintiff submits opposition to the motion, and the City submits a reply.

The City argues that it is entitled to summary judgment, because Officer Coy, as the operator of an authorized emergency vehicle in an emergency operation, did not act with reckless disregard at the time of the accident and is therefore not liable for plaintiff's injuries. *See* Vehicle and Traffic Law (VTL) § 1104. The City asserts that the applicable standard in assessing liability during an emergency operation of a police vehicle is "reckless disregard for the safety of others," which was not established here. *Saarinen v Kerr*, 84 NY2d 494 (1994). A person acts with reckless disregard when they act "in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome." *Saarinen*, 84 NY2d at 501 (internal quote and citation omitted).

The City contends that this standard applies to the instant matter because an NYPD motor vehicle is an authorized emergency vehicle, pursuant to VTL § 101,¹ and said vehicle was involved in an emergency operation at the time of the accident, pursuant to VTL § 114-b². Additionally, the City argues that Officer Coy was engaging in privileged conduct pursuant to VTL 1104 (b), which provides that

The driver of an authorized emergency vehicle may (1) Stop, stand or park irrespective of the provisions of this title; (2) Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary

¹ VTL § 101 provides that an authorized emergency vehicle includes, "[e]very ambulance, police vehicle or bicycle, correction vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, blood delivery vehicle, county emergency medical services vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle and ordnance disposal vehicle of the armed forces of the United States."

² VTL § 114-b provides that an emergency operation includes, "[t]he operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous materials or other emergency."

for safe operation; (3) Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation; and (4) Disregard regulations governing directions of movement or turning in specified directions.

The City argues that, pursuant to VTL § 1104 (b), Officer Coy's conduct was not reckless as a matter of law, because there is no evidence that demonstrates that he intentionally acted with conscious indifference to the outcome. *See Saarinen*, 84 NY2d at 501. Rather, the City asserts, Officer Coy took the necessary precautions by activating his turret lights and sirens, slowing down as he approached the subject intersection, looking both ways to ensure the intersection was clear, and only then proceeding through the intersection. In support of the motion, the City annexes the affidavit of Lieutenant Taekyun Kim (Kim), who was in the passenger seat of the subject NYPD vehicle. Lieutenant Kim attested that Officer Coy took these precautions, attempting to ensure that it was safe to proceed through the steady red light, and that Kim did not see any vehicles in the intersection before proceeding. *See* NYSCEF doc. no. 22, at ¶¶ 4 and 5. The City also argues that, other than his own affidavit, plaintiff fails to submit any evidence in admissible form, and fails to raise a triable issue of fact in opposition to the motion.

In opposition, plaintiff argues that the City's motion must be denied, because triable issues of fact exist as to whether Officer Coy was operating the vehicle negligently and/or with reckless disregard for the safety of others. Plaintiff asserts that Officer Coy was reckless, because he was driving in the wrong lane of traffic, at night, in a residential area, and he testified that he had "no idea" of his speed immediately before entering the intersection. *See* NYSCEF doc. no. 21 at 41, lines 15-18. Further, plaintiff asserts that the City has not submitted any call records indicating that Officer Coy was responding to an emergency operation at the time of the accident and, therefore, maintains that a question of fact exists as to whether his vehicle was involved in an emergency operation. Plaintiff also attests that he did not hear sirens or see flashing lights before

the impact and that Officer Coy only turned on his turret lights after the impact occurred, in contrast with the City's recounting of the incident. *See* NYSCEF doc. no. 20 at 18, lines 1-18; NYSCEF doc. no. 21 at 24, lines 15-22. Moreover, plaintiff argues that a question of fact exists as to whether Officer Coy looked to his left when crossing the intersection, because plaintiff maintains that he had his headlights on and would have been visible to Officer Coy.

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); *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*, 3 NY2d at 404. 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*, 153 AD2d at 521.

Here, triable issues of fact exist as to whether Officer Coy was driving recklessly, whether he was involved in an emergency operation, whether he looked in both directions before crossing the intersection, and whether he had his turret lights and sirens on before the impact. Plaintiff's affidavit sufficiently raises these issues of fact; denial of summary judgment is appropriate in light of the conflicting affidavits supplied here. Therefore, affording plaintiff all favorable

inferences, the City's motion for summary judgment must be denied as several triable questions of fact remain.

Accordingly, it is hereby

ORDERED that the City of New York's and Police Officer Daniel Coy's motion for summary judgment is denied; and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall serve a copy of this order upon all parties, with notice of entry, and shall file such notice via NYSCEF.

The foregoing constitutes the decision and order of the Court.

1/3/2023
DATE


LESLIE A. STROTH, 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