

**Khan v Caviness**

2023 NY Slip Op 35102(U)

August 7, 2023

Supreme Court, Queens County

Docket Number: Index No. 717801/22

Judge: Timothy J. Dufficy

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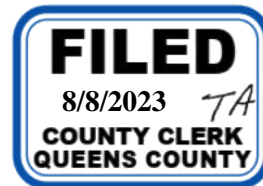
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**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**



-----X  
**ZAKARI KHAN**

**Plaintiff,**

**-against-**

**Index No.: 717801/22**

**Mot. Date: 6/6/23**

**Mot. Seq.: 3**

**ALUTHEA VERON CAVINESS II,**  
**ALUTHEA V. CAVINESS, BARBARA J.**  
**TRUGLIO, A J SACKS-HOPPENFELD**  
**and PV HOLDING CORP,**

**Defendants.**

-----X

The following papers were read on this motion by defendants AJ Sacks-Hoppenfeld and PV Holding Corp for an order, pursuant to CPLR 3212, granting summary judgment in their favor on the issue of liability and dismissing plaintiff’s complaint and all cross-claims against them.

PAPERS  
NUMBERED

Notice of Motion-Affidavits-Exhibits.....	EF 89-94
Answering Affidavits-Exhibits.....	EF 96-96
Replying Affidavits.....	EF 104

Upon the foregoing papers, the motion by defendants AJ Sacks-Hoppenfeld (Sacks-Hoppenfeld) and PV Holding Corp (PV Holding) is granted in part and denied in part; in that: the motion is granted ONLY as to defendant Sacks-Hoppenfeld; and, the motion is denied, as moot, as to defendant PV Holding, since summary judgement was already granted in favor of PV Holding in a prior decision and order of this Court.

This action arises out of a three-vehicle accident, that occurred on December 11, 2021, at approximately 7:45 p.m., on the southbound Meadowbrook State Parkway, approximately one mile north of the Southern State Parkway, in Nassau County, New York. According to the court file and the pedigree information on the certified police accident report, a white Jeep, operated by defendant Althea V. Caviness (Caviness), is identified as Vehicle 1. Plaintiff was a passenger in Vehicle 1. Vehicle 2 is a Subaru, owned and operated by the defendant Barbara J. Truglio ( Truglio), and Vehicle 3 is a Honda sedan, operated by moving defendant Sacks-Hoppenfeld.

Defendants Sacks-Hoppenfeld and PV Holding move for an order, pursuant to CPLR 3212, granting summary judgment in their favor on the issue of liability and dismissing plaintiff's complaint and all cross-claims against them.

As an initial matter, the branch of the motion seeking summary judgment in favor of defendant PV Holding Corp is denied, as moot. In this Court's Order, dated May 25, 2023 and filed on May 31, 2023, defendant PV Holding Corp's unopposed motion for summary judgment in its favor, pursuant to 49 U.S.C. § 30106 (the Graves Amendment) was granted and plaintiff's complaint and all cross claims were dismissed as against it. (*see* NYSCEF Doc. No. 102).

The Court notes, that in its Order, dated July 3, 2023 and filed on July 5, 2023, this Court denied defendant Truglio's motion for summary judgment (*see* NYSCEF Doc. No. 105).

As to the branch of the motion seeking summary judgment on the issue of liability in favor of defendant Sacks-Hoppenfeld and dismissing plaintiff's complaint and all cross-claims against him, such is granted, for the reasons set forth below.

It is undisputed that there was an impact between the Caviness vehicle and the Truglio vehicle. It is further undisputed that after that impact, the Caviness vehicle struck the Sacks-Hoppenfeld vehicle.

In support of the motion, defendant Sacks Hpoppenfeld submits, *inter alia*, his own affidavit wherein he states that he was traveling in the right lane below the speed limit when he heard a loud bang and then saw the Caviness vehicle traveling perpendicular to traffic from his left. He braked, but one second later, the Caviness vehicle struck the drivers's side door of his vehicle, forcing it onto the shoulder. The Caviness vehicle then rolled over. Sacks-Hoppenfeld also submits the affidavit from his passenger, Erica Finkelstein, who corroborates his version of the accident.

The Court has not considered the part of the motion that refers to the conclusion of the state trooper regarding the "contributing factors" of the accident, since there is no evidence that the trooper witnessed the accident, investigated the accident or was qualified to offer an opinion as to the cause of the accident (*see Sanchez v Steenson*, 101 AD3d 982 [2d Dept. 2012]; *Altemestica v Colon*, 304 AD2d 508 [2d Dept. 2003]; *Murray v Donlon*, 77 AD2D 337 [2d Dept. 1980]). The Court has also not considered the statements in the report since there is no evidence as to the source of these statements (*see Yassin v Blackman*, 188 AD3d 62 [2d Dept. 2020]; *Memenza v Cole*, 131 AD3d 1020 [2d Dept. 2015]). It is not enough that the report is properly certified, because "even

where a police report is properly certified, the hearsay statements of nonparties or unknown sources contained therein may not be admitted for their truth” (*Yassin, supra*, 188 AD3d at 66; *Noakes v Rosa*, 54 AD3d 317, 318 [2d Dept 2008]).

Defendant Sacks -Hoppenfeld contends that summary judgment should be granted in his favor as he was “faced with an unforeseen emergency situation which he did not cause or create.”

A movant for summary judgment must make *prima facie* showing of entitlement to summary judgment as a matter of law through the submission of sufficient evidence to demonstrate the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Once the movant has made the *prima facie* showing, the burden shifts to the opposing party to come forward with sufficient proof in admissible form to establish the existence of triable issue of fact( *Id*; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]).

“The emergency doctrine holds that those faced with a sudden and unexpected circumstance, not of their own making, that leaves them with little or no time for reflection or reasonably causes them to be so disturbed that they are compelled to make a quick decision without weighing alternate courses of conduct, may not be negligent if their actions are reasonable and prudent in the context of the emergency” (*Evans v Bosl*, 75 AD3d 491 [2d Dept. 2010] quoting *Bello v. Transit Auth. of N.Y. City*, 12 AD3d 58, 60 [2d Dept. 2004]; *see Miloscia v. New York City Bd. of Educ.*, 70 AD3d 904, 905 [2d Dept. 2010]; *Vitale v Levine*, 44 AD3d 935, 936 [2d Dept. 2007]).

Although the existence of an emergency and the reasonableness of the response to it generally present issues of fact for purposes of application of the emergency doctrine (*see Lonergan v Almo*, 74 AD3d 902, 903 [2d Dept. 2010]; *Khan v. Canfora*, 60 AD3d 635, 636 [2d Dept. 2009]), those issues may in appropriate circumstances be determined as a matter of law (*see Tsai v. Zong-Ling Duh*, 79 AD3d 1020 [2d Dept. 2010]).

Here, the evidence before the Court, that is in admissible form, such as the affidavits of the parties, establishes that Sacks-Hoppenfeld was confronted with an emergency not of his own making, leaving him virtually no opportunity to avoid a collision (*see Pappas v New York City Tr. Auth.*, 208 AD3d 890 [2d Dept. 2020]; *Weber v Monsey New Sq. Trails Corp.*, 191 AD3d 929, 929 [2d Dept. 2021]; *Flores v Metropolitan Transp. Auth., Long Is. Bus*, 122 AD3d 672, 673 [2d Dept. 2014]; *Miloscia v New York City Bd. of Educ.*, 70 AD3d 904, 905 [2d Dept. 2010]).

In opposition, the speculative and conclusory assertions by defendant Caviness fail to raise a triable issue of fact (*see Fawcett v Suffolk Transp. Serv., Inc.*, 55 AD3d 535 [2d Dept. 2008]; *Koenig v Lee*, 53 AD3d 567 [2d Dept. 2008]).

Accordingly, it is

**ORDERED** that the motion by defendants Sacks-Hoppenfeld and PV Holding Corp is granted in part and denied in part; in that: it is

**ORDERED** that the branch of the motion seeking summary judgment on the issue of liability is granted ONLY as to defendant Sacks-Hoppenfeld; it is further

**ORDERED** that plaintiff's complaint and all cross claims against defendant AJ Sacks-Hoppenfeld are dismissed; and it is further

**ORDERED** that the branch of the motion seeking summary judgment on the issue of liability and dismissing the plaintiff's complaint and cross-claims as to defendant PV Holding Corp is denied, as moot, as PV Holding was previously granted this relief in a prior decision and order of this Court, dated May 25, 2023.

**Dated: August 7, 2023**



**TIMOTHY J. DUFFICY, J.S.C.**

