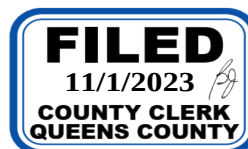


Burdette v Martin
2023 NY Slip Op 35248(U)
October 31, 2023
Supreme Court, Queens County
Docket Number: Index No. 717827/21
Judge: Timothy J. Dufficy
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Short Form Order**NEW YORK SUPREME COURT - QUEENS COUNTY****PRESENT: HON. TIMOTHY J. DUFFICY**
Justice**PART 35**-----X
JAKE. R. BURDETTE**Plaintiff,****-against-****DOREEN A. MARTIN and NINA C.**
KOPPELMAN,**Defendants,**
-----X**Index No.: 717827/21****Mot. Date: 10/17/23****Mot. Seq.: 1**

The following papers were read on this motion by defendant Nina C. Koppelman for an order, pursuant to CPLR 3212, granting summary judgment in her favor on the issue of liability and dismissing plaintiff's complaint and all cross-claims against her.

PAPERS
NUMBERED

Notice of Motion-Affidavits-Exhibits.....	EF 32-42
Answering Affidavits-.....	EF 43
Answering Affidavits-Exhibits.....	EF 55-56
Replying Affidavits.....	EF 45

Upon the foregoing papers, the motion by Nina C. Koppelman is denied.

This lawsuit arises from a motor vehicle accident, that occurred on March 1, 2019, between 7 a.m. and 8 a.m. ,on the eastbound Northern State Parkway, in Nassau County. All parties agree that the roadway was "wet and slushy" at the time of the accident due to an earlier snowfall.

Moving defendant Koppelman (movant) was the driver of a 2016 Toyota Camry. She testified that she was traveling in the middle lane when she observed a grey sedan, that was stopped perpendicular to the roadway, blocking the right and middle lanes. She later learned that this vehicle was owned and operated by defendant Doreen A. Martin (Martin). Movant testified that she was 5 to 6 car lengths away from the Martin vehicle, when she first observed it, and she traveling "about 50 mph". Her highest speed limit in the ten minutes that she had been traveling on the parkway was 55 mph. The Court takes judicial notice that the maximum posted speed limit on the Northern State Parkway is 55 miles per hour.

She further testified that upon observing the stopped car, she made sure that the left lane was clear, and then moved into the left lane. After moving into the left lane, she was involved in

an accident with a white sedan driven by plaintiff. She testified that the contact was to her passenger side front bumper and does not know what part of the plaintiff's vehicle was involved in the accident. She testified that she was in the left lane and plaintiff was in the middle lane. She had reduced her speed to 30 or 35 mph at the time of the impact with the plaintiff's vehicle.

Martin testified that she was driving a 2014 Nissan Maxima. It was lightly snowing at the time of the accident. As she was moving from the center lane to the right lane, her vehicle lost control and started spinning. She spun out around 2 or 3 times. When her car came to rest, it was the front was in the right lane and the rear was in the middle lane. Her airbags were deployed and there was damage to her wheel and bumper, but she does not know what causes this: "I feel like I hit into something but it was—I don't know". She did not see an impact between Koppelman and plaintiff.

Plaintiff testified that he was driving a 2006 Nissan Maxima. It had snowed earlier and his windshield wipers were on due to water from the roadway. He described the traffic conditions as "congested". He was in the left lane and traveling about 55 mph when he was struck on the passenger side by a gray Nissan Maxima, which pushed his car into the concrete median. He then briefly lost consciousness and then observed two other vehicles on the opposite side of the roadway. One was a gray Nissan and the other was a gray Toyota. On further questioning, he testified that he had no independent recollection as to whether it was the Nissan and or the Toyota that was in contact with his vehicle.

Koppelman moves for summary judgment on grounds that she was faced with an emergency situation—Martin's stopped vehicle blocking the roadway. The motion is opposed by plaintiff and Martin.

Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*see Rodriguez v Parkchester South Condominium, Inc.*, 178 AD2d 231 [1st Dept. 1991]). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A party seeking summary judgment may not merely point to gaps in the opponent's proof to obtain relief. Rather, the movant must adduce affirmative evidence of its entitlement to summary judgment (*Torres v Industrial Container*, 305 AD2d 136 [1st Dept. 2003]).

"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]). "Both the existence of an emergency and the reasonableness of a party's response thereto will ordinarily present questions of fact" (*Pavane v Marte*, 109 AD3d 970, 971, [2d Dept. 2013] [internal quotation marks omitted]; see *Hendrickson v Philbor Motors, Inc.*, 101 AD3d 812, 813 [2d Dept. 2012]; *Williams v City of New York*, 88 AD3d 989, 990 [2d Dept. 2011]; *Crawford-Dunk v MV Transp., Inc.*, 83 AD3d 764 [2d Dept. 2011]). A party may not rely on the emergency doctrine if he or she caused or contributed to the emergency (see *Mead v Marino*, 205 AD2d 669 [2d Dept. 1994]. The emergency doctrine is not a defense available to a defendant if the emergency condition was partially created by a defendant's disregard of existing traffic conditions (see *Pearson v Northstar Limousine, Inc.*, 123 AD3d 991 [2d Dept. 2014]; *Marsicano v Dealer Stor. Corp.*, 8 AD3d 451, 452-453 [2d Dept. 2004]; *Cascio v Metz*, 305 AD2d 354, 356, 759 NYS2d 552 [2d Dept. 2003]

"Defendants moving for summary judgment in a negligence action arising out of an automobile accident have the burden of establishing, prima facie, that they were not at fault in the happening of the accident" (*Rosa v Gordlis*, 211 AD3d 1060, 1061, *Elusma v Jackson*, 186 AD3d 1326 [2d Dept. 2020]; *Nesbitt v Gallant*, 149 AD3d 763 [2d Dept. 2017]). "There [may] be more than one proximate cause of an accident, and, [g]enerally, it is for the trier of fact to determine the issue of proximate cause" (*Rosa v Gordlis*, *supra*, *Choo v Virginia Transp. Corp.*, 204 AD3d 743 [2d Dept. 2022]).

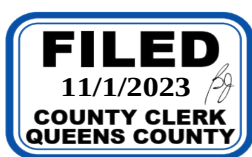
Here, viewing the evidence most favorably to the plaintiff and Martin, there are triable issues of fact as to whether Koppelman caused or contributed to the accident by driving her vehicle at or close to the maximum speed limit of 55 miles per hour on the Northern State Parkway. under wet and slushy roadway conditions and whether she should have seen the Martin vehicle before she was only 5 to 6 car lengths away from it. A driver is obliged to operate his or her vehicle with due regard for traffic and road conditions and see that which is there to be seen through use of the senses (see *Pawlukiewicz v. Boisson*, 275 AD2d 446 [2d Dept. 2000]). Furthermore, even if an emergency existed, there are questions of fact as to whether her actions

were reasonable.

Accordingly, it is

ORDERED that the motion by for summary judgment by defendant Nina C. Koppelman is denied.

Dated: October 31, 2023



TIMOTHY J. DUFFICY, J.S.C.