

Reid v Casey
2024 NY Slip Op 35451(U)
April 17, 2024
Supreme Court, Queens County
Docket Number: Index No. 718253/2019
Judge: Kevin J. Kerrigan
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN
JusticePart 10-----X
Kariesha Reid,Index
Number: 718253/2019

Plaintiff,

Motion
Date: 4/15/24

- against -

Michael J. Casey, City of New York, and
New York City Police Department,

Motion Seq. No.: 2

Defendants.
-----X

The following papers numbered E40-51 read on this motion by Plaintiff for summary judgment and to strike the Defendants' affirmative defenses.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	E40-48
Affirmation in Opposition.....	E49-50
Affirmation in Reply.....	E51

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Plaintiff for summary judgment is denied. The branch of the motion to strike the Defendants affirmative defenses is granted to the extent that the affirmative defenses of assumption of the risk, the emergency doctrine, and governmental immunity are hereby stricken.

Plaintiff allegedly sustained injuries stemming from a motor vehicle accident which occurred on May 31, 2019 on North Conduit Avenue near Francis Lewis Boulevard in Queens County.

On the date of incident, Plaintiff was operating a 2006 Mercedes Benz. Defendant, Michael J. Casey was operating a 2019 Ford New York Police Department (NYPD) SUV in his capacity as an NYPD employee. Prior to the collision, Plaintiff observed the NYPD vehicle double parked and stopped on North Conduit Avenue in front of a precinct located there. As Plaintiff approached, she shifted her vehicle to pass the NYPD SUV. The front of Plaintiff's vehicle

passed the front of the NYPD SUV when the NYPD SUV began to reverse, and the two vehicles collided.

Plaintiff testified at her 50-h hearing and deposition that on the date of incident she traveling along North Conduit Avenue. North Conduit Avenue is a one-way street with one lane of traffic in each direction and one lane for parked vehicles. The accident occurred in front of the 105th NYPD precinct. The parking "lane" in front of the precinct contains diagonal parking spots. While traveling on North Conduit Avenue, Plaintiff began to pass the police precinct on her left side, traveling approximately 15 to 20 miles per hour. An NYPD vehicle was double-parked in front of the precinct. No lights or sirens were activated. Plaintiff shifted her vehicle to the right in order to pass. Immediately prior to the accident, the front of Plaintiff's vehicle, up to the driver's door, had passed the NYPD SUV. As Plaintiff passed, the NYPD SUV suddenly reversed into a parking spot, causing impact between the rear of the NYPD SUV and Plaintiff's driver's side door.

Defendant, Police Officer Michael J. Casey testified at his deposition that he is an officer employed by the NYPD and was employed in the same capacity on the date of incident. The police vehicles in front of the 105th precinct are "combat park[ed]" and department vehicles back in to the spots situated there. At the time of incident, Casey was a driver of a department vehicle attempting to combat park. In the vehicle with him was Police Officer Giovanni Giovanniello. The vehicle was in good working condition. Per his statements in the police report and collision report, and based on his common practice, Casey testified that he slowed down and checked his rearview mirrors. He did not observe Plaintiff's vehicle and so he began to reverse. As he did so, his vehicle collided with the Plaintiff's.

Giovanniello testified at his deposition that he was a passenger in the NYPD SUV on the date of incident, which was operated by his partner, Officer Michael J. Casey. Combat parking is a method of parking which allows for easier departure in emergencies. Giovanniello did not observe Plaintiff's vehicle prior to impact. When he did observe Plaintiff's vehicle, it was attempting to pass the NYPD SUV on the passenger side.

The collision report prepared in response to the subject accident contains a statement from Casey, which provides that prior to reversing, he slowed the vehicle and looked to his right. As he was backing up, a motorist attempted to overtake his vehicle and struck it. A statement from the Plaintiff provides that she was traveling behind the NYPD SUV when he slowed down and turned to the right as she attempted to pass him, causing impact. The police report prepared provides substantially the same information.

Plaintiff alleges that the Defendants violated three sections of the New York City Vehicle and Traffic Law. Section 1211(a) provides that "the driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic." Section 1180(a) provides that the operator of a vehicle shall not travel at a speed greater than is reasonably prudent under the circumstances and must have regard for the actual and potential hazards existing. Section 388 provides that the owner of a vehicle is liable for injuries sustained resulting from the negligent use or operation of such vehicle. A violation of the standard of care imposed by the Vehicle and Traffic Law constitutes negligence per se (see Pena v. Spade, 145 A.D.3d 791 [2d Dept. 2016]).

The crux of Defendants' liability here is determinative of the purported violation of Section 1211(a) of the VTL. In determining liability pursuant to Section 1211(a) of the VTL, the Court must ascertain whether the driver of the vehicle backing up exercised the proper precautions prior to doing so (see Portalatin v. City of New York, 165 A.D.3d 1302 [2d Dept. 2018]; Gil v. Jewish Bd. of Family & Children's Servs., Inc., 183 A.D.3d 468 [1st Dept. 2020]; Ortiz v. Lynch, 105 A.D.3d 584 [1st Dept. 2013]). Here, Defendants submitted evidence in opposition, in the form of Casey's testimony and the collision and police reports, that Casey slowed his speed, checked his rearview mirrors, and observed no oncoming traffic prior to reversing. Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (see Rotuba Extruders v Ceppos, 46 N.Y.2d 223 [1978]). Here, the Defendants are entitled to all favorable inferences that can be drawn from the evidence, and the papers must be scrutinized in a light most favorable to them (see Rodriguez v Parkchester South Condominium, Inc., 178 A.D.2d 231 [1st Dept. 1991]). In giving Defendants every favorable inference, as this Court must, there appears to be a question of fact as to whether Casey exercised the proper precautions under Sections 1211(a) and 1180(a) of the VTL, thereby precluding an award of summary judgment.

The branch of the motion to strike the Defendants' affirmative defenses is granted in part. In its amended answer, the Defendants raise the following affirmative defenses: culpable conduct, assumption of the risk, governmental immunity, the emergency doctrine, and limitation of the amounts recoverable pursuant to CPLR §1601, General Obligations Law §15-108, and CPLR §4545. Plaintiff solely moves to dismiss the affirmative defenses of culpable conduct, assumption of the risk, governmental immunity, and the emergency doctrine. Defendants take no position with respect to the affirmative defenses of assumption of the risk and the emergency doctrine. With regard to culpable conduct, there is a question of fact as to the happening of the accident,

specifically with respect to whether Plaintiff's purported attempt to overtake the Defendants' vehicle caused or contributed to collision (see Logan, 165 A.D.3d at 911). With regard to governmental immunity, Plaintiff argues that pursuant to General Municipal Law §50-a, the municipal Defendant is liable for the negligence of its officers who operate department vehicles when acting within the scope of their employment, and thus, are not entitled to governmental immunity. In opposition, Defendants proffer no support for the contention that utilization of combat parking triggers governmental immunity. Indeed, it is undisputed that Casey was employed by the NYPD and operating a department vehicle while in the scope of his employment, and thus, the municipal Defendant may be liable pursuant to General Municipal Law §50-a. Accordingly, the instant branch of the motion is granted to the extent that Defendants' affirmative defenses of assumption of the risk, the emergency doctrine, and governmental immunity are hereby stricken.

Accordingly, the motion for summary judgment is denied. The branch of the motion to strike the Defendants affirmative defenses is granted to the extent that the affirmative defenses of assumption of the risk, the emergency doctrine, and governmental immunity are hereby stricken.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: April 17, 2024



KEVIN J. KERRIGAN, J.S.C.

