

Maxwell v City of New York

2025 NY Slip Op 31196(U)

April 2, 2025

Supreme Court, New York County

Docket Number: Index No. 157882/2019

Judge: Jeanine R. Johnson

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JEANINE R. JOHNSON PART 52M

Justice

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LEAH MAXWELL,

Plaintiff,

- v -

THE CITY OF NEW YORK, NYC POLICE DEPARTMENT,
SUJIT M NAIR, GONXHE BAJRAMI, NEVZAT BAJRAMI,
FRANCISCO J FABIAN POLANCO, DEEPTI S JANI

Defendant.

INDEX NO.	157882/2019
MOTION DATE	07/25/2023, 10/10/2023, 10/23/2023, 11/03/2023
MOTION SEQ. NO.	005 006 007 008
DECISION + ORDER ON MOTION	

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, 84, 85, 86, 107, 162

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 113, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 163

were read on this motion to/for

DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 007) 98, 99, 100, 101, 102, 103, 104, 105, 106, 114, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 164

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 109, 110, 111, 112, 117, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 165

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents and oral argument heard on December 4, 2024, Defendant, Francisco J. Fabian Polanco (hereinafter "Polanco") motion for summary judgment to dismiss the complaint pursuant to CPLR § 3212 on the issue of liability is denied. Defendants – Gonxhe Bajrami and Nevzat Bajrami’s (hereinafter "Bajrami") motion for summary judgment pursuant to CPLR § 3212 and dismissal of the complaint and all cross claims is granted. Plaintiff – Leah Maxwell’s motion summary for summary judgment on the issue of liability against the

Defendants –The New York Police Department (hereinafter “NYPD”) and The City of New York (hereinafter collectively “the City”), Bajrami and Polanco is granted in part. Motion sequences 007 and 008 were withdrawn by counsel on the record on December 4, 2024.

LEGAL STANDARD

To succeed on a motion for summary judgment, the moving party must make a prima facie showing of entitlement to summary judgment as a matter of law by demonstrating the absence of any material issues of fact. *See generally Friends of Thayer Lake LLC v. Brown*, 27 NY3d 1039 (2016). *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824 (2014); CPLR §3212(b). “If the moving party makes out a prima facie showing, the burden then shifts to the non-moving party to establish the existence of material issues of fact which preclude judgment as a matter of law.” *Jacobsen*, 22 NY3d at 833. If there are no material, triable issues of fact, summary judgment must be granted. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957).

“Collateral estoppel, or issue preclusion, ‘precludes a party from relitigating an issue in a subsequent action that was clearly raised and decided in a prior action against that party,’ which applies whether the tribunals or causes of action are the same.” *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 (1999). If the issue has been raised prior and decided, the issue must be precluded. “[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identity and decisiveness of the issue, while the burden rests upon the opponent to establish the absence of a full and fair opportunity to litigate the issue in prior action or proceeding.” *Ryan v NY Tel. Co.*, 62 NY2d 494, 501 (1984). For collateral estoppel to apply, the issue in the second action must be identical to the one raised in the first action. *Parker*, 93 NY2d 343.

Pursuant to New York VTL § 1129(a), “the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for speed of such vehicles and the traffic upon and the condition of the highway.” Additionally, “it is well settled that a rear-end collision with a stopped vehicle created a presumption that the operator of the moving vehicle was negligent.” *Agramonte v. City of New York*, 288 A.D.2d 75, 76 (1st Dept 2001). To rebut the presumption of negligence, the operator must submit a “non-negligent explanation for the collision.” *Tejeda v Aifa*, 134 AD3d 549, 549 (1st Dept 2015); *See Morales v Consolidated Bus Tr., Inc*, 167 AD3d 457, 457 (1st Dept 2018). Additionally, “in a chain-reaction collision... responsibility presumptively rests with the rearmost driver.” *Chang v Rodriguez*, 57 AD3d 295 (1st Dept 2008); *Mustafaj v Driscoll*, 5 AD3d 138, 138 (1st Dept 2004)

DISCUSSION

Motion Sequence 5

Polanco asserts summary judgment should be granted in his favor on the issue of liability because his “vehicle was rear-ended and there [was] nothing he could have done to avoid the accident.” (Def-Polanco Aff. In Sup. pg. 8). To support his claim, Polanco submitted (1) the uncontradicted sworn testimony of his passenger; (2) Plaintiff’s deposition testimony – stating the “first impact she felt was from the rear, when [Polanco’s] vehicle was rear-ended”; and (3) a certified police report in which Co-Defendant – Nair admitted to rear-ending Co-Defendant – Bajrami and Co-Defendant, Bajrami admitted to rear-ending Polanco.” (Def-Polanco Aff. In Sup. p. 8). Lastly, Polanco maintains the prior decision by Honorable Lyle E. Frank, “should be disregarded by the court, as... [it] merely found that Plaintiff failed to meet the burden of proof on the papers submitted... [and] does not collaterally [estop] this motion in this case.” (Def-Polanco Aff. in Reply. Pg. 2).

The City asserts “Polanco’s first motion for summary judgment (as a Plaintiff) was denied [and is] the law of the case... [thus this motion] must be denied now that he moves as a Defendant.” Def–City Aff. In Opp. p. 1. Specifically, the City asserts that Justice Frank found Polanco failed “to articulate how the finding of negligence as to contact made to the Bajrami vehicle extends to the contact made by the Bajrami vehicle to his vehicle, as well as the contact made by [Polanco’s] vehicle to the fourth vehicle.” Def–City Aff. in Opp. p.3. As such, the City contends there is a question of fact as to “whether Polanco was following too closely to the vehicle in front of him and whether that negligence and impact with the vehicle in front of him contributed to the alleged injuries of his passenger, Plaintiff.” Def–City Aff. in Opp. p. 3.

This Court finds that although Polanco added Plaintiff’s deposition testimony dated October 6, 2022, to its submission of this motion for summary judgment, it does not resolve the questions of fact previously outlined by Justice Frank. *Friends of Thayer Lake LLC*, 27 NY3d 1039; *Jacobsen*, 22 NY3d 824. Accordingly, Polanco’s motion for summary judgment and application for dismissal of complaint and crossclaims is denied.

Motion Sequence 6

A. Motion for Summary Judgment – Bajrami

Bajrami asserts the Honorable Dakota J. Ramseur’s “prior order establishes that... [they] are not liable in this action... [and] acts as collateral estoppel and issue preclusion” in this current action, thus barring relitigation. Def–Bajrami Aff. in Sup. p. 3. Additionally, Bajrami contends it has “established a prima facie case that they are not a proximate cause of the subject accident” that caused Plaintiff’s injuries as it was “the middle vehicle in a chain collision” propelled forward by the City’s vehicle. Def–Bajrami Mem. of Law pp. 4-7. None of the other parties in this matter oppose this motion.

This Court finds Plaintiff's submissions, including the police report, Plaintiff's testimony dated July 14, 2022, and Defendant–Nevzat Bajrami's testimony dated August 9, 2023, are sufficient to establish prima facie entitlement to summary judgment as a matter of law. *Morales v Consolidated Bus Tr., Inc*, 167 AD3d 457, 457 (1st Dept 2018) (The Court found that the defense of another car's sudden stop does not rebut the presumption of negligence in a rear-end accident of not maintaining a safe distance.) Accordingly, Bajrami's motion for summary judgment is granted.

B. Cross-Motion for Summary Judgment – Plaintiff

Plaintiff asserts summary judgment on the issue of liability as to the City should be granted because “the evidence on record, clearly establishes that [they] caused a multi-car rear-end chain reaction collision... rendering the City... [as the rearmost vehicle] liable as a matter of law for injuries caused to the Plaintiff, a passenger in [the] vehicle rear-ended by the Bajrami vehicle that was propelled forward into Plaintiff's vehicle by the City.” Pl. Aff. in Sup. of Cross Mot. pp. 1-4. Additionally, Plaintiff maintains the City “should be precluded from arguing that they were not responsible for the subject collision because the issue was previously decided in the Bajrami action.” Pl. Aff. in Sup. of Cross Mot. pp. 5,6. Plaintiff asserts further that if “the Court finds there is any culpability attributable to either Defendant, Bajrami or Polanco, it [must] grant summary judgment.” Pl. Aff. in Sup. of Cross Mot. p. 6. Lastly, Plaintiff maintains the City's “affirmative defenses of culpable conduct... and emergency operation should also be dismissed as she bears no liability... [as a] rear-seat passenger.” Pl. Aff. in Sup. of Cross Mot. p. 6.

Defendant – Polanco argues summary judgment should not be granted against him in favor of Plaintiff because “there [was] nothing he could have done to avoid the accident,” and the City is at fault. Def–Polanco Aff. Opp. p. 5.

This Court finds there are issues of material fact as to whether Polanco was negligent in maintaining a safe distance from the car in front of him. *Friends of Thayer Lake LLC*, 27 NY3d 1039; *Jacobsen*, 22 NY3d 824. Accordingly, Plaintiff’s application for a finding of summary judgment against Polanco on the issue of liability is denied.

Defendant - City argues summary judgment should not be granted against them in favor of Plaintiff because “Polanco struck another vehicle in the rear while Plaintiff Maxwell was his passenger... [and] there are questions of fact whether Polanco was maintaining a safe distance from the vehicle in front of him and whether his negligent failure to maintain a safe distance contributed to the personal injuries of his passenger.” Def–City Aff. in Opp. p. 2. Although this Court agrees, as mentioned above there are questions of fact as to Polanco’s liability that does not foreclose the City’s liability. *See Chang v Rodriguez*, 57 AD3d 295 (1st Dept 2008); *Mustafaj v Driscoll*, 5 AD3d 138, 138 (1st Dept 2004) (“In a chain-reaction collision, responsibility presumptively rests with the rearmost driver”). Additionally, this Court finds the affirmative defenses of culpable conduct and emergency operation are dismissed as Plaintiff was a seat belted rear-seat passenger and the City’s testimony confirmed they were not enroute to an emergency. Accordingly, Plaintiff’s motion for summary judgment on the issue of liability as to the City is granted, and Plaintiff’s application for the dismissal of the City’s affirmative defenses as to culpable conduct and emergency operation is granted.

Accordingly, it is hereby

ORDERED that Defendant – Francisco Polanco’s motion for summary judgment on the issue of liability is denied; it is further

ORDERED that Defendants – Gonxhe Bajrami and Nevzat Bajrami motion for summary judgment is granted; it is further

ORDERED that any and all claims and cross-claims as to the Defendants - Gonxhe Bajrami and Nevzat Bajrami are dismissed; it is further

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability as to the Defendant -The City of New York is granted; it is further

ORDERED that Plaintiff’s application for dismissal of the City’s affirmative defenses of culpable conduct and emergency operation is granted; it is further

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability as to the Defendants-Gonxhe Bajrami and Nevzat Bajrami is denied; it is further

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability as to the Defendant-Polanco is denied; it is further

ORDERED that Motion Sequences 007 and 008 are denied as moot following the movants application to withdraw on December 4, 2024; and it is further

ORDERED that any relief not specifically resolved herein is denied.

This constitutes the Decision and Order of the Court.

Motion Sequence #5

4/2/2025
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

HON. JEANINE R. JOHNSON
J.S.C.



JEANINE R. JOHNSON, J.S.C.

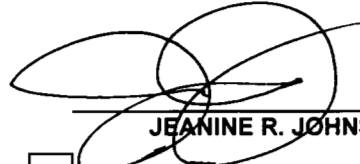
APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

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Motion Sequence #6

HON. JEANINE R. JOHNSON
J.S.C.



4/2/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

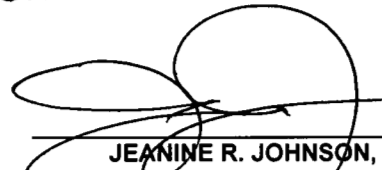
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CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

JEANINE R. JOHNSON, J.S.C.

Motion Sequence #7

HON. JEANINE R. JOHNSON
J.S.C.



4/2/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

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JEANINE R. JOHNSON, J.S.C.

Motion Sequence #8

HON. JEANINE R. JOHNSON
J.S.C.



4/2/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

JEANINE R. JOHNSON, J.S.C.