

DP v Hiltzik

2025 NY Slip Op 34526(U)

November 19, 2025

Supreme Court, New York County

Docket Number: Index No. 159493/2023

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

Defendant Kenneth Patton's transcript was submitted, this Court will not consider the subsequent and unsupported affirmation. (NYSCEF Doc. 71, 72, 73, 74).

Patton Defendants' Motion for Summary Judgement and Sanctions

In support of their motion for summary judgment, the Patton Defendants submit an affidavit of operator Kenneth Patton, the certified police report, footage purporting to depict the subject accident (from a security camera of a nearby bank), footage from responding Police Officers' body cameras and a notice to admit. (NYSCEF Doc. 25, 26, 27, 28, 29). In opposition to the motion, Defendant Hiltzik submits his own affirmation, in addition to the attorney affirmation in opposition (combined as NYSCEF Doc. 47). Plaintiffs do not oppose.

A party seeking summary judgment, even if unopposed, has the high burden of establishing entitlement to judgment as a matter of law with evidence in admissible form. (*see* CPLR §3212 [b], *Voss v Netherlands Ins. Co.*, 22 N.Y.3d 728, 734, 8 N.E.3d 823 [2014]; *Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324–25, 501 N.E.2d 572, 574 [1986]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action”. (*Alvarez* 68 N.Y.2d at 324).

Upon review, the Patton Defendants met their *prima facie* burden in establishing that Kenneth Patton did not cause the subject accident, and that the sole cause of the accident was Defendant Hiltzik's vehicle crossing into oncoming traffic. Defendant Kenneth Patton, the operator of a vehicle involved in the accident, has personal knowledge of how the accident occurred. In his affidavit, Defendant Kenneth Patton avers that he was traveling north at 40 miles per hour on Old Riverhead Road, a two-way road with one lane each for moving vehicles, when suddenly and without warning the vehicle operated by Defendant Hiltzik, crossed the solid line in the middle of the road, came into his lane of travel and caused a head-on collision. Defendant Kenneth Patton applied his brakes immediately, but he had no time to turn the wheel due to the sudden and unexpected actions of the Hiltzik vehicle, and could not avoid the impact. (NYSCEF Doc. 25). The certified police report also provides an accident description and diagram that is consistent with Defendant Kenneth Patton's affidavit. (NYSCEF Doc. 26).

In opposition, Defendant Hiltzik does not submit any admissible evidence that contradicts Defendant Kenneth Patton's version of this incident and does not raise any material issues of fact.

Rather, Defendant Hiltzik's affirmation acknowledges that his vehicle crossed into oncoming traffic. (NYSCEF Doc. 47). Defendant Hiltzik's explanation for the collision, that he suffered an unspecified medical episode, even if supported with admissible evidence, does not raise a material question of fact as to Defendant Kenneth Patton's liability. Moreover, asserting that the motion is premature is not persuasive as Defendant Hiltzik has not shown how further discovery will lead to relevant evidence necessary to oppose the motion. (*see Cioe v. Petrocelli Elec. Co., Inc.*, 33 A.D.3d 377, 823 N.Y.S.2d 359 [1st Dept 2006]; *see also Acevedo v. Akhtar*, 204 A.D.3d 596, 165 N.Y.S.3d 314 [1st Dept 2022]).

As the Patton Defendants established that Defendant Kenneth Patton was not negligent in causing the subject accident, and as Defendant Hiltzik has not raised any material question of fact as to Defendant Kenneth Patton's negligence, that portion of the Patton Defendants motion for summary judgment is granted.

That portion of the Patton Defendants motion which seeks sanctions against Plaintiffs is denied as it has not been shown that the action against the Patton Defendants was frivolous warranting sanctions. (*See Highland Cap. Mgmt., L.P. v. Stern*, 157 A.D.3d 501, 66 N.Y.S.3d 603 [1st Dept 2018]).

Plaintiff's Cross-Motion for Summary Judgment Against Defendant Hiltzik

In support of their cross-motion, Plaintiffs rely upon the evidence submitted by the Patton Defendants. Plaintiffs argue that such evidence establishes negligence on the part of Defendant Hiltzik because it is clear that Defendant Hiltzik crossed the solid line, in violation of Vehicle and Traffic Law §1120 and §1126, causing the head-on collision with oncoming traffic.

Vehicle and Traffic Law §1120 (a) provides that "upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway". Vehicle and Traffic Law §1126(a) provides that "when official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings."

"A violation of traffic law, absent an excuse, constitutes negligence...." (*Delgado v. Martinez Fam. Auto*, 113 A.D.3d 426, 427, 979 N.Y.S.2d 277, 279 [1st Dept 2014]). A party may be found negligent where the evidence establishes a violation of §1126(a). (*See Lawton v. Holt*,

238 A.D.2d 218, 656 N.Y.S.2d 252 [1st Dept 1997]; *Haughey v. Noone*, 262 A.D.2d 284, 691 N.Y.S.2d 553 [1st Dept 1999]).

Here, the uncontroverted evidence establishes Defendant Hiltzik crossed over the solid line dividing his lane of traffic on Old Riverhead Road from Defendant Kenneth Patton's lane of traffic, causing the collision. Plaintiffs have therefore met their *prima facie* burden in establishing that Defendant Hiltzik was negligent in causing the accident.

In opposition, Defendant Hiltzik has not raised a material question of fact. Although Defendant Hiltzik asserts that he suffered a medical episode, and reported it to responding police at the time of the accident, Defendant Hiltzik has not submitted any admissible evidence supporting this claim. The medical episode has not been specified by Defendant Hiltzik in his affirmation, nor has any supporting evidence of such episode been submitted; there is no evidence of any treatment, diagnosis or explanation of the episode by a medical professional. It is the defendant's burden to establish a non-negligent reason for an accident. (*See Ahmad v. Behal*, 221 A.D.3d 558, 200 N.Y.S.3d 359 [1st Dept 2023]). If asserting a medical episode as a non-negligent reason for the accident, it is Defendant Hiltzik's burden to establish such a claim with admissible evidence. (*See Liddell v. Morrison*, 204 A.D.3d 987, 165 N.Y.S.3d 342 [2d Dept 2022]). In opposition, Defendant Hiltzik did not provide a non-negligent explanation for the accident. Accordingly, Plaintiffs' cross-motion is granted.

It is hereby

ORDERED that Defendants Casey Patton and Kenneth Patton's motion for summary judgment pursuant to CPLR §3212 to dismiss the Plaintiffs' Complaint and all crossclaims is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of Defendants Casey Patton and Kenneth Patton, dismissing the claims and crossclaims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action is severed and continued against the remaining Defendant; and it is further

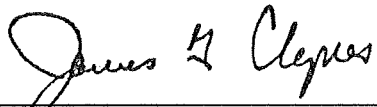
ORDERED that the caption be amended to reflect the dismissal against Defendants Casey Patton and Kenneth Patton and that all future papers filed with the court reflect the amended caption; and it is further

ORDERED that Defendants Casey Patton and Kenneth Patton’s motion for sanctions against the Plaintiffs is denied; and it is further

ORDERED that Plaintiffs’ cross-motion for summary judgment against Defendant Matthew Hiltzik is granted; and it is further

ORDERED that counsel for Defendants Casey Patton and Kenneth Patton shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the within; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

<u>11/19/2025</u> DATE	 <hr/> JAMES G. CLYNES, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE