

Capellan v Casiano

2025 NY Slip Op 34655(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 152739/2021

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JAMES G. CLYNES PART 22

Justice

-----X
EDUAL CAPELLAN
Plaintiff,
- v -
ANGELA M. CASIANO,
Defendant.
-----X

INDEX NO. 152739/2021
MOTION DATE 02/06/2024
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 62, 63, 64, 65, 66, 67, 68, 69 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the forgoing documents, Defendant Angela M. Casiano’s motion pursuant to CPLR 3212 for an Order granting summary judgment in her favor and dismissing the Plaintiff’s Complaint is denied.

This personal injury matter arises out of a January 28, 2021 incident, in which it is alleged that Plaintiff, Edual Capellan, was struck by Defendant’s Honda as he was attempting to walk across the roadway at, or near, 512 Second Avenue in Manhattan, and that the vehicle, after striking Plaintiff, left the scene.

Defendant Casiano contends that she is not responsible for the accident as her vehicle was not operational and was parked at her home at the time of the accident.

In support of the motion for summary judgment, Defendant submits transcripts from the Plaintiff’s May 20, 2021 EUO and August 8, 2022 deposition, Defendant’s August 25, 2022 deposition as well as Defendant’s friend, Lisa Palmeri’s, non-party deposition (NYSCEF Doc. 44, 45, 46, 47). Defendant also submits certified copies of the NYPD’s January 28, 2021 Complaint

Report and January 31, 2021 Police Accident Report. Plaintiff opposes and also submits a New York DMV report purporting to reflect the registration history related to the subject vehicle's VIN. (NYSCEF Doc. 63).

The proponent of a summary judgment motion has the initial burden of establishing his or her entitlement to judgment as a matter of law by tendering evidence sufficient to eliminate any material issues of fact (*Wasserman v Carella*, 307 AD2d 225 [1st Dept 2003]). Upon review, Defendant has not made a *prima facie* showing entitling her to judgment as a matter of law as material questions of fact remain.

Defendant has acknowledged that she owned a silver or grey colored two-door Honda passenger car bearing New York State license plate JFD5353 at the time of this accident which she duly registered approximately six or seven months prior to this incident and that the vehicle was insured with Nationwide (NYSCEF Doc. 46, pg. 21-23). The DMV report submitted by Plaintiff would appear consistent with the Defendant's deposition testimony (NYSCEF Doc. 63).

However, Defendant testified at her deposition that her Honda was not working as the radiator had broken just a week prior to this incident and that the car was parked outside of her home in Gardiner, New York (NYSCEF Doc. 46, pg. 28-29). The Defendant's husband repaired the radiator at some point, but, the Honda was "junked" approximately one month after the accident because the transmission was no longer working. (NYSCEF Doc. 46, pg. 31-32). Defendant also testified that all licensed drivers who had access to the Honda were at home on the night of this incident, along with Defendant's friend Lisa Palmari (NYSCEF Doc. 46, pg. 9-12; 34-37). Lisa Palmari testified at her deposition that she was at Defendant's home on the date of this incident, that she knew Defendant owned multiple Honda vehicles and that a four-door Honda car was not working at the time of the incident. (NYSCEF Doc. 47 pg. 8-9).

Upon review, the Certified Complaint Report and Police Accident Report submitted by Defendant in support of the motion raise a material question of fact as to the involvement of Defendant's Honda in this incident. (NYSCEF Doc. 43).

Although an uncertified police accident report prepared by an officer that did not witness the accident in question is not admissible for the purpose of establishing the cause of the accident (*Garcia v BLS Limousine Serv. of New York, Inc.*, 199 AD3d 612 (1st Dept 2021), “[i]t is well established that police accident reports are admissible as business records so long as the report is made based upon the officer's personal observations and while carrying out their police duties.” (*Holliday v Hudson Armored Car & Courier Serv., Inc.*, 301 AD2d 392, 396 [1st Dept 2003])).

Here, the Certified Complaint Report appears to have been prepared within an hour after the incident occurred and reflects that after striking the Plaintiff, the vehicle left the scene. The reporting officer is identified as Officer Milata and the supervising officer as Lt. Kim. The report also identifies Plaintiff as the sole reporter of the incident, and reflects that Plaintiff provided Officer Milata with the full New York license plate, JFD5353. No unknown witnesses or other reporters are identified as having contributed to the investigation. (NYSCEF Doc. 43). The Certified Police Accident Report, prepared by Officer Milata and Reviewed by Sgt. Cheung, also identifies Plaintiff as having provided the full license plate and no unknown witnesses are identified. (NYSCEF Doc. 43). Plaintiff testified at his deposition that he spoke with responding officers at the scene and subsequently spoke with the investigating officer over the phone and at the precinct about this incident. (NYSCEF Doc. 45, pg. 49-51).

Although these reports may not establish fault for this incident, they raise a material question of fact as to the involvement of Defendant's Honda that cannot be adjudicated as a matter of law. Contrary to Defendant's argument, this instant matter is not analogous to *Rodriguez v. Sit*

as the alleged vehicle in *Rodriguez* was not identified by the plaintiff, but an apparent anonymous witness (169 AD3d 406 [1st Dept 2019]). Here, the contemporaneous reports consistently identify Defendant's vehicle and identify Plaintiff as the only source of the information provided to the investigating officer.

Additionally, although Defendant insists that her Honda could not have been involved in this matter because it was not working as the radiator had broken just a week prior to this incident, Defendant has not submitted any admissible evidence showing that the subject Honda was not operational on the date of this accident due to an issue with the radiator, or any other mechanical problem, that it was subsequently repaired, or that the vehicle was "junked" shortly after this incident due to additional mechanical issues.

"[T]he remedy of summary judgment is a drastic one, which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable, since it serves to deprive a party of his day in court. Relief should be granted only where no genuine, triable issue of fact exists." (*Gibson v Am. Exp. Isbrandtsen Lines, Inc.*, 125 AD2d 65, 74 [1st Dept 1987] *internal citations omitted*). Given the relief requested, as the certified Complaint Report and Police Accident Report duly identify Defendant's vehicle as having been involved, judgment as a matter of law is not appropriate and should be left to the trier of fact in this matter. As the Defendant has not met her *prima facie* burden, the sufficiency of the Plaintiff's opposition to the motion is immaterial. (*See Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Accordingly, it is hereby

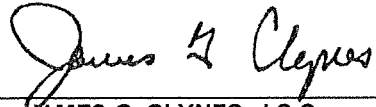
ORDERED that Defendant's motion to summary judgment is denied; and it is further

ORDERED that, within 20 days from the entry of this order, Plaintiff shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office,

who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such upon 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).

12/8/2025
DATE


JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
				FIDUCIARY APPOINTMENT		