

Antoine v City of New York

2025 NY Slip Op 34897(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 159825/2020

Judge: Hasa A. Kingo

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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. HASA A. KINGO **PART** **05M**

Justice

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CHINELLE ANTOINE,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY FIRE
DEPARTMENT, STEPHEN P NURNBERGER

Defendant.

-----X

INDEX NO. 159825/2020

MOTION DATE N/A

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157

were read on this motion for SUMMARY JUDGMENT.

Defendants THE CITY OF NEW YORK, NEW YORK CITY FIRE DEPARTMENT, and STEPHEN P. NURNBERGER (collectively, the “City”) move, for a second time, for summary judgment pursuant to CPLR § 3212 dismissing the complaint and all cross-claims, contending that the FDNY ambulance was engaged in an emergency operation and that EMT Nurnberger’s conduct is governed by Vehicle and Traffic Law (“VTL”) § 1104’s “reckless disregard” standard, under which, the City argues, no triable issue exists.

BACKGROUND AND ARGUMENTS

This action seeks damages for personal injuries allegedly sustained on March 21, 2020, at approximately 12:05 p.m., when Plaintiff Chinelle Antoine (“Plaintiff”)—operating a USPS postal truck northbound on Broadway—entered the intersection at West 168th Street and collided with an FDNY ambulance operated by Stephen P. Nurnberger.

The City previously cross-moved for summary judgment in 2021; by decision dated December 8, 2022, the prior motion was denied. In that decision, the court expressly identified as “outstanding” a material factual dispute “as to whether the ambulance siren was on or off,” and held that the dispute must be resolved before the court could determine whether VTL § 1104’s “reckless disregard” standard applies and, if it applies, whether the driver acted with reckless disregard.

The City now brings this second CPLR § 3212 motion, asserting that it is supported by evidence not available at the time of the prior summary judgment motion, including discovery exchanged pursuant to the Case Scheduling Order and deposition testimony of Plaintiff (February 1, 2024) and EMT Nurnberger (February 14, 2024).

Plaintiff opposes, arguing, among other things, that the City's application is an improper successive summary judgment motion (and, in substance, a renewal motion that was not properly denominated or supported), because much of the "new" material was within the City's custody and control and could have been presented earlier. Plaintiff further argues that, even on the merits, triable issues remain—most critically, whether the siren was activated—precluding any determination, as a matter of law, that the City is entitled to judgment.

Plaintiff testified, at her 50-h hearing, that she did not see or hear the ambulance before impact. She likewise testified at her EBT that she did not hear any sirens or see flashing lights prior to the collision.

By contrast, EMT Nurnberger testified that his lights and sirens were on as he proceeded into the intersection against a red light. The City also points to incident paperwork reflecting a claim that lights and sirens were activated, and to dash-cam footage that, the City contends, depicts activated lights and audible sirens.

DISCUSSION

As a threshold matter, the court concludes that the City's motion is procedurally defective. A party may not obtain multiple opportunities to seek summary judgment by simply re-packaging arguments or submitting evidence that was previously available but strategically withheld. As the Appellate Division, First Department, has made clear, successive motions for summary judgment are disfavored and should be denied absent a showing of newly discovered evidence or other sufficient cause (*Valenti v. Camins*, 95 AD3d 519, 520 [1st Dept 2012]; *Jones v. 636 Holding Corp.*, 73 AD3d 409, 410 [1st Dept 2010]).

Critically, evidence is not "new" within the meaning of CPLR § 3212 merely because it was not previously submitted. Rather, the movant must demonstrate that the evidence could not have been obtained earlier with due diligence (*Mejia v. Nanni*, 307 AD2d 870, 871 [1st Dept 2003]; *see also Rivers v. Birnbaum*, 102 AD3d 26, 43 [2d Dept 2012]).

Here, the City's prior summary judgment application—made by cross-motion—was denied specifically because of an unresolved factual dispute as to whether the ambulance siren was activated at the time it entered the intersection. That determination was explicit and dispositive. The City now returns with a second CPLR § 3212 motion relying primarily on (1) deposition testimony, (2) FDNY records, and (3) internal radio transmissions—all of which, with the exception of Plaintiff's deposition testimony, were within the City's possession, custody, or control at the time of the original motion.

Courts routinely reject successive summary judgment motions where, as here, the purportedly new evidence was in the movant's possession at the time of the original motion (*Burbige v. Siben & Ferber*, 152 AD3d 641, 642 [2d Dept 2017]). The City has made no showing that this evidence was unavailable despite the exercise of due diligence, nor has it articulated any justification for failing to present it earlier.

Accordingly, the motion is properly denied on procedural grounds alone.

Even assuming *arguendo* that the court were to entertain the merits, the City has failed to satisfy its prima facie burden under CPLR § 3212. Summary judgment is a “drastic remedy” that may be granted only where the movant establishes entitlement to judgment as a matter of law by tendering evidence sufficient to eliminate any material issues of fact (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to meet that burden requires denial of the motion, “regardless of the sufficiency of the opposing papers” (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

The City’s application falters on a fundamental point: it does not resolve—indeed, it cannot resolve on this record—the factual dispute as to whether the ambulance siren was activated at the time EMT Nurnberger proceeded through a steady red light.

The City seeks the protection of Vehicle and Traffic Law § 1104, which limits liability for operators of authorized emergency vehicles engaged in emergency operations to conduct undertaken in “reckless disregard for the safety of others” (*Saarinen v. Kerr*, 84 NY2d 494, 501 [1994]). However, the applicability of that heightened standard is not automatic. It depends, in the first instance, on whether the statutory prerequisites for invoking the privileges of § 1104 were satisfied.

Among those prerequisites is the use of audible signals when proceeding through a red light (VTL § 1104[c]; see *Kabir v. County of Monroe*, 16 NY3d 217, 221–222 [2011]). Where the record contains conflicting evidence as to whether a siren was activated, summary judgment is inappropriate (*Balcacer v. City of New York*, 163 AD3d 412, 413 [1st Dept 2018]; *LoGrasso v. City of New York*, 142 AD3d 531, 532 [2d Dept 2016]).

That is precisely the posture of this case. Plaintiff testified unequivocally that she did not hear any sirens and did not observe any emergency warnings prior to impact. EMT Nurnberger testified to the contrary. This conflict is not collateral—it goes to the heart of whether the ambulance was lawfully exercising the privileges of § 1104 at all. As this court previously held, the siren issue must be resolved before the court can determine whether the reckless disregard standard applies in the first instance.

The City’s reliance on dash-cam footage does not alter that conclusion. Courts have repeatedly cautioned against resolving credibility disputes or drawing factual inferences from evidence such as video evidence on summary judgment where the evidence or footage is subject to competing interpretations (*Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 [2012]).

Here, the City’s assertion that sirens can be heard on the video depends on playback conditions, volume levels, and interpretive assumptions that cannot be resolved as a matter of law. Where, as here, a party’s sworn testimony directly contradicts the movant’s interpretation of video evidence, the issue must be left to the trier of fact.

The City further argues that, even assuming the reckless disregard standard applies, EMT Nurnberger’s conduct was not reckless as a matter of law. That argument is premature.

Reckless disregard requires proof that the operator acted with “conscious indifference to the outcome” and engaged in conduct that posed “an unreasonable risk of harm” to others (*Szczerbiak v. Pilat*, 90 NY2d 553, 557 [1997]).

Whether that standard is met is ordinarily a question for the jury, particularly where the facts surrounding the emergency vehicle’s operation are contested (*Campbell v. City of Elmira*, 84 NY2d 505, 510 [1994]).

Here, the unresolved dispute regarding siren activation precludes a threshold determination that § 1104 applies at all. Absent resolution of that predicate issue, the court cannot—and should not—render a determination as a matter of law on the ultimate question of recklessness. To do so would impermissibly invade the province of the factfinder (*Johnson v. City of New York*, 102 AD3d 746, 747 [2d Dept 2013]).

Accordingly, it is hereby

ORDERED that the City’s motion for summary judgment (CPLR § 3212) dismissing the complaint and all cross-claims is denied; and it is further

ORDERED that the action shall proceed toward trial.

This constitutes the decision and order of the court.



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12/15/2025

DATE

HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE