

Perez v County of Nassau
2025 NY Slip Op 35448(U)
January 14, 2025
Supreme Court, Nassau County
Docket Number: Index No. 615272/2021
Judge: Philippe Solages, Jr.
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At Part 31 of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Courthouse at 100 Supreme Court Drive, Mineola, New York on the 14 day of January 2025.

P R E S E N T:

HON. PHILIPPE SOLAGES, JR.,
ACTING JUSTICE OF SUPREME COURT

-----X
JOEL ABREU PEREZ,

Plaintiff

DECISION & ORDER

-against-

Index No. 615272/2021

COUNTY OF NASSAU, NASSAU
INTER-COUNTY EXPRESS,
TRANSDEV SERVICES, INC. and
SIDNEY HAN,

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number, were considered in the review of this motion (Motion Seq. No. 001): 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 38, 39, 40, 41, 42, 43, 44, 45

Upon the foregoing papers, Defendants County of Nassau and Nassau Inter-County Express' motion (Seq. No. 001) move for summary judgment pursuant to CPLR 3212. Plaintiff submits opposition. For the following reasons, Defendants' motion is granted.

BACKGROUND & PROCEDURAL HISTORY

The instant action arises from a near-miss automobile collision on November 16, 2020, whereby Plaintiff was a passenger on a bus operated by Defendant, Sydney Han ("Han") and owned by Defendants, County of Nassau and Nassau Inter-County

Express. At the time of the incident Defendants' bus was traveling southbound on the right lane of Nassau Road near the intersection of Northern Parkway. A pickup truck in the left lane suddenly merged in front of Defendants' bus resulting in Han abruptly braking to avoid an accident. The bus's sudden braking allegedly caused Plaintiff to be jerked from his seat resulting in him sustaining injuries.

As a result of the incident, Plaintiff commenced the instant action on December 6, 2021 (*see* NYSCEF Doc # 1). Issue was joined when the Defendants answered the complaint on February 25, 2022 (*id.* at Doc # 2).

MOTION FOR SUMMARY JUDGMENT

Defendants argue Han's decision to brake was reasonable under the circumstance to avoid a collision. Defendants further assert that the merging vehicle created an emergency which necessitated the bus to brake suddenly. As a result, Defendants contend that they are entitled to summary judgment since they cannot be held liable for Plaintiff's injuries pursuant to the emergency doctrine. In support of their motion, Defendants attach as exhibits, *inter alia*, Han's affidavit and the bus's dashcam footage at the time of the near miss collision (*see* NYSCEF Doc # 13-15). Defendants maintain the attached evidence demonstrates the necessity for Defendants' vehicle to brake due to the emergency circumstance.

In opposition, Plaintiff argues that the dashcam footage shows that Han was speeding and driving recklessly at the time of the near miss collision. Plaintiff further contends that Han should have reasonably anticipated the pickup truck attempting to change lanes since it was accelerating prior to merging onto the right lane. Plaintiff also asserts that the issues of the emergency doctrine's applicability and whether Han responded reasonably under the circumstances are questions of fact best left for a jury. Finally, Plaintiff argues that Defendants' motion should be denied as

premature pursuant to CPLR § 3212(f) since he sought further discovery from Defendants.

ANALYSIS

Summary Judgment:

CPLR § 3212 provides, “any party may move for summary judgment in any action, after issue has been joined...” Summary judgment should only be granted where it is clear that no material and triable issue of fact is present. If there exists a factual issue that can be argued, then summary judgment should not be granted (*see Matter of New York City Asbestos Litig.*, 33 NY3d 20 [2019]). “Once the movant makes the proper showing, ‘the burden shifts to the party opposing the motions 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’” (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 448 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “The ‘facts must be viewed in the light most favorable to the non-moving party’” (*Stonehill Capital Mgt. LLC*, 28 NY3d at 448, quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). Further, CPLR § 3212(f) provides that, “should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.” However, “the ‘mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered’ by further discovery is an insufficient basis for denying the motion” (*Berrios-Lemus v Village of Spring Val.*, 122 AD3d 650, 651 [2d Dept 2014], quoting *Woodlard v Thomas*, 77 AD3d 738, 740 [2d Dept 2010]).

Negligence:

“To establish a prima facie case of negligence, a plaintiff must establish the existence of a duty owed by a defendant to the plaintiff, a breach of that duty, and that such breach was a proximate cause of injury to the plaintiff” (*Conneally v Diocese of Rockville Ctr.*, 116 AD3d 905 [2d Dept 2014], quoting *Alvino v Lin*, 300 AD2d 421 [2d Dept 2002]). “‘A conclusory affidavit or an affirmation by an individual without personal knowledge of the facts does not establish the proponent’s prima facie burden’ on a motion for summary judgment” (*Zeldin v Larose*, 223 AD3d 858 [2d Dept 2024], quoting *Beauvoir v Samuel*, 204 AD3d 741, 742 [2d Dept 2022]).

Emergency Doctrine:

“This doctrine recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be so disturbed that the actor must make a speedy decision without weighing the alternative courses of conduct, the actor may not be liable if the actions taken are reasonable and prudent in the emergency context” (*see Rivera v New York City Transit Authority*, 77 NY2d 322, 327 [1991], citing *Amaro v New York*, 40 NY2d 30, 36 [1976]; *see also Kong v MTA Bus Co.*, 112 AD3d 581 [2d Dept 2013]).

As a preliminary issue, both this Court and the Hon. Felice J. Muraca, A.J.S.C. have previously addressed the issues raised by Plaintiff with respect to any pertinent discovery (*see* NYSCEF Doc # 96 & 166), and the parties have asked this Court to rule upon the instant motion. Moreover, Defendants have also submitted a Jackson Affidavit regarding the discovery herein sought by Plaintiff (*id.* at Doc # 195).

Here, the Defendants have met their prima facie entitlement to a grant of summary judgment. The dashcam footage annexed to their moving papers clearly shows a pickup truck suddenly merging in front of the path of Defendants’ bus.

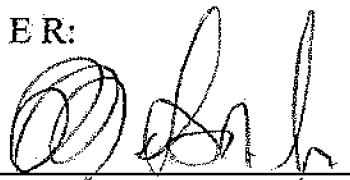
Moreover, although the merging truck did accelerate, it however failed to signal prior to changing lanes, thus leaving Defendants' vehicle with little or no time for reflection prior to braking. Additionally, the dashcam footage contradicts Plaintiff's contention of reckless driving, showing Han driving straight, at a rate of speed less than 25 miles per hour, and within the boundaries of the traffic lines. Consequently, Plaintiff has failed demonstrate that Defendants' vehicle violated any vehicle or traffic laws. Similar to *Kong*, Plaintiff failed to show how Han's actions were not reasonable and prudent in an emergency (*see Kong*, 112 AD3d at 582). In sum, Plaintiff failed to any raise a triable issue of fact in opposition to the granting of Defendants' motion.

Accordingly, it is:

ORDERED that Defendants, County of Nassau and Nassau Inter-County motion for summary judgment is **GRANTED**, and the instant action is hereby **DISMISSED** in its entirety.

This constitutes the Decision and Order of the Court.

ENTER:



HON. PHILIPPE SOLAGES, JR.
A.J.S.C.

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE