

Graham-Edwards v Hernandez
2026 NY Slip Op 30355(U)
January 28, 2026
Supreme Court, Kings County
Docket Number: Index No. 512705/2025
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 28th day of January, 2026.

P R E S E N T :
HON. WAVNY TOUSSAINT,
Justice.

MELISSA GRAHAM-EDWARDS,

Plaintiff,

Index No.: 512705/2025

- against -

DECISION AND ORDER

PEDRO DIAZ HERNANDEZ and LORINDA ENTERPRISES, LTD.,

Defendants.

The following papers numbered 1 to read herein:
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered
8-9

16
18

Upon the forgoing papers, plaintiff Melissa Graham-Edwards (“Plaintiff”) moves (Seq. 01) for an order, pursuant to CPLR § 3212, granting summary judgment against defendants Pedro Diaz Hernandez and Lorinda Enterprises, LTD. (“Defendants”), on the issue of liability and striking defendants’ first and seventh affirmative defenses of comparative negligence and the emergency doctrine from their Answer. Defendants oppose the motion.

BACKGROUND

This action arises from a motor vehicle accident that occurred on November 18, 2024, at or near the intersection of Nostrand Avenue and Willoughby Avenue in Brooklyn, New York. The plaintiff alleges she was a pedestrian lawfully crossing the street within a crosswalk and with a white walking signal when the defendant's vehicle struck her.

THE PARTIES' CONTENTIONS

Plaintiff contends that defendant, failed to exercise due care to avoid colliding with her, failed to keep a reasonably careful lookout for pedestrians, failed to see what there was to be seen, and failed to yield the right of way although she was lawfully in the crosswalk; and thus was negligent as a matter of law. Plaintiff further contends that that there are no genuine issues of material fact that require a trial on the issue of liability.

Plaintiff also contends that it is not the plaintiff's burden, on a motion for summary judgment, to show an absence of plaintiff comparative fault—of which plaintiff maintains there is none. Moreover, plaintiff contends, defendants' first affirmative defense of comparative fault should be stricken because documentary evidence establishes her freedom from fault. In addition, plaintiff asserts that defendants seventh affirmative defense based on the emergency doctrine, should be stricken because they have not shown that an emergency actually occurred.

Defendants oppose the motion, arguing that it should be denied because there are triable issues of fact regarding plaintiff's fault and credibility, which requires a jury determination. Additionally, defendants argue that plaintiff's motion is premature, as no depositions have been conducted. Defendants further argue that plaintiff's moving papers

are insufficient to establish liability, asserting that the police report is inadmissible because the officer did not witness the accident and the report does not fall within the business record exception to the hearsay rule, as the parties were under no duty to report the accident to the police.

In reply, plaintiff argues that defendants failed to provide proof in admissible form—such as an affidavit—to raise a triable issue of fact. Plaintiff also argues that defendants have not demonstrated how additional discovery would yield relevant evidence or that facts essential to opposing the motion are exclusively within plaintiff’s control.

DISCUSSION

A party moving for summary judgment bears the initial burden of submitting evidentiary proof, in admissible form, sufficient to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Rosa v Gordils*, 211 AD3d 1060, 1060 [2d Dept 2022]). “The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers.” *Id.* If the movant satisfies this burden, the obligation then shifts to the opposing party to submit admissible evidence establishing the presence of genuine, triable issues of fact that warrant a trial (*Id.*).

Importantly, a plaintiff seeking summary judgment on liability is not required to establish the absence of comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 323 [2018]; *Ahmed v Garzon*, 210 AD3d 832, 833 [2d Dept 2022]). Moreover, “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” for an opposing party to defeat a prima facie showing of entitlement to summary judgment (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]; *Kwang*

Bok Yi v Open Karaoke Corp., 161 AD3d 971, 972 [2d Dept 2018]). An attorney affirmation that is not based on personal knowledge likewise cannot raise a triable issue of fact, although it may be used to submit admissible exhibits (*Id.* at 563).

Pursuant to Vehicle and Traffic Law 1146, a driver has a statutory duty to exercise due care to avoid colliding with pedestrians on the roadway, as well as a common-law duty to see what should have been seen through the proper use of their senses. (*E.B. v Gonzalez*, 208 AD3d 618, 619 [2d Dept 2022]). “[A] pedestrian who has the right of way is entitled to anticipate that motorists will obey the traffic laws that require them to yield” (*Farooq v Uber USA, LLC*, 235 AD3d 846, 847 [2d Dept 2025]).

Here, plaintiff’s submissions are sufficient to establish a prima facie case of negligence against the defendants. Plaintiff’s affidavit demonstrated that she was walking within a crosswalk while the pedestrian signal displayed a walk signal when she was struck by defendants’ vehicle. The admissibility of the police report is immaterial because plaintiff has established a prima facie case without it. In response defendants failed to submit an opposing affidavit or other admissible evidence to raise a triable issue of fact. The affirmation submitted by defendants’ attorney is insufficient to defeat plaintiffs’ prima facie showing of negligence, as the affirmation is not based on the attorney’s personal knowledge of the accident. Additionally, in the absence of evidence supporting comparative fault or an emergency that prevented the defendants’ from avoiding the collision, defendants’ affirmative defenses are without merit and are dismissed.

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment (Seq. 03) is granted as to liability and dismissal of the affirmative defenses. Discovery shall continue on the issue of damages.

This constitutes the decision and order of the Court.

For Clerks use only

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MD _____
Motion Seq. |

E N T E R



J.S.C.

Hon. Wavny Toussaint
J.S.C.

KINGS COUNTY CLERK
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