Miller v Averett
2026 NY Slip Op 31292(U)
March 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 505506-2025
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 505506-2025
Motion Date: 12-15-25
Mot. Seq. No.: 2

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SARAH MAI PUGH MILLER, as Executrix of the Estate of HEATH A. MILLER, and SARAH MAI PUGH MILLER, individually,

Plaintiffs,

-against-

DECISION/ORDER

ELLEN AVERETT a/k/a ELLEN AVERETTSMITH, as Executrix of the Estate of PETER R. SMITH, TESLA, INC., TESLA OF NEW YORK, and TESLA MEATPACKING,

Defendants.

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The following papers, which are e-filed with NYCEF as items 21-34, 52-63, 71-72, were read on this motion:

In this product liability and wrongful death action, defendants TESLA, INC., TESLA OF NEW YORK, and TESLA MEATPACKING (collectively "Tesla") move for an order pursuant to CPLR § 3211(a)(7) dismissing the Amended Complaint of Plaintiff SARAH MAI PUGH MILLER for failure to state a claim. Plaintiff and co-defendant ELLEN AVERETT oppose the motion.

Plaintiff alleges that on February 17, 2023, decedent Heath A. Miller was operating a 2023 Tesla Model Y that collided head-on with a vehicle operated by decedent Peter R. Smith. The occupants of both vehicles perished in the collision. The Amended Complaint asserts seven causes of action against Tesla, including design defect, failure to warn, manufacturing defect, breach of warranties, and wrongful death. Tesla now moves to dismiss, arguing, *inter alia*, that "undisputed evidence" establishes Mr. Miller was solely responsible for the collision.

Tesla's motion to dismiss the complaint centers on several key pieces of evidentiary material intended to prove that the driver's actions, rather than any vehicle defect, were the sole proximate cause of the accident. Central to this argument is the photogrammetric analysis of surveillance footage from Truman's Beach conducted by engineer James Walker. This analysis

determined that the 2023 Tesla Model Y was traveling at a minimum speed of 99 mph, and likely over 100 mph, at the time of the head-on collision. Tesla relies on its Owner's Manual to establish that its Autopilot and Autosteer systems automatically disengage and cannot be activated at speeds exceeding 90 mph, thereby concluding that the "automatic driving system" was not engaged and could not have caused the crash. Tesla thus argues that this evidence shows that Plaintiff's contention that the automatic driving system was defective was not a fact at all.

Tesla's submissions also include the Suffolk County Medical Examiner's toxicology report, which revealed that the driver, Heath Miller, had a blood alcohol concentration of 0.25%, more than three times the legal limit. This report is paired with a New York State Police Accident Reconstruction Report that identifies Miller's improper lane usage and severe intoxication as the primary contributing factors to the collision.

Regarding the post-impact fire, Tesla points to the toxicology report's finding of an absence of carbon monoxide in Miller's blood to argue he died instantly upon impact and was not killed by "thermal runaway" or smoke inhalation. Additionally, Tesla argues that at a combined "closing speed" of over 100 mph, catastrophic structural intrusion was inevitable regardless of design.

Finally, Tesla submitted contractual documents, including the Motor Vehicle Order Agreement and the New Vehicle Limited Warranty, to demonstrate that it had properly and conspicuously disclaimed all express and implied warranties. By executing these agreements, Tesla asserts that Mr. Miller was put on notice that no warranties existed outside of the specific limited terms provided at the time of purchase. Tesla also emphasizes that the official police report confirmed the vehicle's Event Data Recorder could not be imaged due to fire damage, which Tesla argues precludes the plaintiff from offering any data-driven evidence to support claims of system failure.

Plaintiff opposes the motion and maintains that the motion is a disguised motion for summary judgment. Plaintiff emphasizes that a motion to dismiss pursuant to CPLR § 3211(a)(7) is strictly limited to the "four corners" of the complaint, which must be afforded a liberal construction and the benefit of every favorable inference. Plaintiff asserts that because they have

pleaded a "cognizable legal theory" regarding Tesla's independent negligence and breach of duty, the court should not consider Tesla's extrinsic evidence—such as expert affidavits and toxicology reports—to determine the merits of the case at this preliminary stage.

Plaintiff also submits the affidavit of George H. Meinschein, P.E., an accident reconstruction expert, who challenges the foundational claim that the vehicle depicted in the high-speed surveillance footage is actually the 2023 Tesla Model Y involved in the accident. He asserts that the vehicle shown in the surveillance screen is equipped with marker lamps that are not found on the rear of a 2023 Tesla Model Y. He concludes that the vehicle traveling at a high rate of speed in the footage—which Tesla's expert used to calculate the 99+ mph speed—is not the vehicle that was operated by Mr. Miller. Finally, plaintiff contends that Tesla's photogrammetric evidence cannot be rebutted without first obtaining all stored data, photographs, and videos taken by the vehicle's own internal systems, which Tesla has not yet produced.

"When assessing the adequacy of a complaint in light of a CPLR 3211(a)(7) motion to dismiss, the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff ... 'the benefit of every possible favorable inference' " (*AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 5 N.Y.3d 582, 591, quoting *Leon v. Martinez*, 84 N.Y.2d 83, 87). A court must "determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d at 87–88). While a court is "permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss pursuant to CPLR 3211(a)(7)" (*Sokol v. Leader*, 74 A.D.3d 1180, 1181), where the motion is not converted to one for summary judgment, "the criterion is whether the [plaintiff] has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the [plaintiff] to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it ... dismissal should not eventuate" (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275). "[O]n a motion made pursuant to CPLR 3211(a)(7), the burden never shifts to the nonmoving party to rebut a defense asserted by the moving party" (*Sokol v. Leader*, 74 A.D.3d at 1181).

First, this motion is not being converted into one for summary judgment pursuant to CPLR 3211(c). Consequently, the Court's analysis remains centered on the adequacy of the pleadings under CPLR 3211(a)(7). Clearly, applying the above principles concerning how a motion to dismiss pursuant to CPLR 3211(a)(7) should be assessed, the Court finds that the Amended Complaint states viable causes of action. Whether the plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) (*see Carlson v. American Intl. Group, Inc.*, 30 N.Y.3d 288, 298, 67 N.Y.S.3d 100, 89 N.E.3d 490; *Davila v. Orange County*, 215 A.D.3d 632, 633, 187 N.Y.S.3d 261).

With respect to the evidentiary materials submitted by Tesla—consisting of expert affidavits, photogrammetric speed analyses, and toxicology reports—these materials did not demonstrate that the factual allegations in the complaint are "not facts at all" or that there are no substantial disputes as to them and do not warrant dismissal of Plaintiff's Amended Complaint.

Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss is **DENIED** in its entirety.

This constitutes the decision and order of the Court.

In this product liability and wrongful death action, Defendant TESLA, INC., TESLA OF NEW YORK, and TESLA MEATPACKING (collectively "Tesla") move for an order pursuant to CPLR § 3211(a)(7) dismissing the Amended Complaint of Plaintiff SARAH MAI PUGH MILLER for failure to state a claim. Plaintiff and co-defendant ELLEN AVERETT oppose the motion.

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breach of warranties, and wrongful death. Tesla now moves to dismiss, arguing that "undisputed evidence" establishes Mr. Miller was solely responsible for the collision.

Tesla's motion to dismiss the complaint centers on several key pieces of evidentiary material intended to prove that the driver's actions, rather than any vehicle defect, were the sole proximate cause of the accident. Central to this argument is the photogrammetric analysis of surveillance footage from Truman's Beach conducted by engineer James Walker. This analysis determined that the 2023 Tesla Model Y was traveling at a minimum speed of 99 mph, and likely over 100 mph, at the time of the head-on collision. Tesla relies on its Owner's Manual to establish that its Autopilot and Autosteer systems automatically disengage and cannot be activated at speeds exceeding 90 mph, thereby concluding that the "automatic driving system" was not engaged and could not have caused the crash. Tesla thus argues that this evidence shows that Plaintiff's contention that the automatic driving system was defective was not a fact at all.

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Finally, Tesla submitted contractual documents, including the Motor Vehicle Order Agreement and the New Vehicle Limited Warranty, to demonstrate that it had properly and conspicuously disclaimed all express and implied warranties. By executing these agreements, Tesla asserts that Mr. Miller was put on notice that no warranties existed outside of the specific limited terms provided at the time of purchase. Tesla also emphasizes that the official police report confirmed the vehicle's Event Data Recorder could not be imaged due to fire damage, which Tesla argues precludes the plaintiff from offering any data-driven evidence to support claims of system failure.

Plaintiff opposes the motion and maintains that the motion is a disguised motion for summary judgment. Plaintiff emphasizes that a motion to dismiss pursuit to CPLR § 3211(a)(7) is strictly limited to the "four corners" of the complaint, which must be afforded a liberal construction and the benefit of every favorable inference. Plaintiff asserts that because they have pleaded a "cognizable legal theory" regarding Tesla's independent negligence and breach of duty, the court should not consider Tesla's extrinsic evidence—such as expert affidavits and toxicology reports—to determine the merits of the case at this preliminary stage.

Plaintiff also submits the affidavit of George H. Meinschein, P.E., an accident reconstruction expert, who challenges the foundational claim that the vehicle depicted in the high-speed surveillance footage is actually the 2023 Tesla Model Y involved in the accident. He asserts that the vehicle shown in the surveillance screen is equipped with marker lamps that are not found on the rear of a 2023 Tesla Model Y. He concludes that the vehicle traveling at a high rate of speed in the footage—which Tesla's expert used to calculate the 99+ mph speed—is not the vehicle that was operated by Mr. Miller. Finally, plaintiff contends that Tesla's photogrammetric evidence cannot be rebutted without first obtaining all stored data, photographs, and videos taken by the vehicle's own internal systems, which Tesla has not yet produced.

"When assessing the adequacy of a complaint in light of a CPLR 3211(a)(7) motion to dismiss, the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff ... 'the benefit of every possible favorable inference' " (*AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 5 N.Y.3d 582, 591, 808 N.Y.S.2d 573, 842 N.E.2d 471, quoting *Leon v. Martinez*, 84 N.Y.2d 83, 87, 614 N.Y.S.2d 972, 638 N.E.2d 511). A court must "determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d at 87–88, 614 N.Y.S.2d 972, 638 N.E.2d 511; *see Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414, 729 N.Y.S.2d 425, 754 N.E.2d 184; *Starr Indem. & Liab. Co. v. Global Warranty Group, LLC*, 165 A.D.3d 1308, 1309, 87 N.Y.S.3d 635).

While a court is "permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss pursuant to CPLR 3211(a)(7)" (*Sokol v. Leader*, 74 A.D.3d 1180,

1181, 904 N.Y.S.2d 153), where the motion is not converted to one for summary judgment, "the criterion is whether the [plaintiff] has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the [plaintiff] to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it ... dismissal should not eventuate" (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17). "[O]n a motion made pursuant to CPLR 3211(a)(7), the burden never shifts to the nonmoving party to rebut a defense asserted by the moving party" (*Sokol v. Leader*, 74 A.D.3d at 1181, 904 N.Y.S.2d 153).

First, this motion is not being converted into one for summary judgment pursuant to CPLR 3211(c). Consequently, the Court's analysis remains centered on the adequacy of the pleadings under CPLR 3211(a)(7). Clearly, the Amended complaint states viable causes of action . Whether the plaintiff can "ultimately establish its allegations is not part of the calculus" at this preliminary stage.

With respect to the evidentiary materials submitted by Tesla, consisting of expert affidavits, photogrammetric speed analyses, and toxicology reports—these materials did not demonstrate that the factual allegations in the complaint are "not facts at all" or that there are no substantial dispute as to them

Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss is **DENIED** in its entirety.

This constitutes the decision and order of the Court.

Dated: March 27, 2026

KINGS COUNTY CLERK
FILED
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HON. PETER P. SWEENEY, J.S.C.

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