

**Caminiti v City of New York**

2012 NY Slip Op 30978(U)

March 8, 2012

Supreme Court, Richmond County

Docket Number: 104014/08

Judge: Thomas P. Aliotta

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

-----X  
**DONNA CAMINITI,**

**Part C-2**

**Plaintiff,**

**Present:**

**HON. THOMAS P. ALIOTTA**

**-against-**

**DECISION AND ORDER**

**THE CITY OF NEW YORK,  
ABCO MAINTENANCE, INC. and JOHN DOE,**

**Index No. 104014/08**

**Defendants.**

**Motion No. 3982-002**

-----X  
**KATHLEEN RATZ,**

**Plaintiff,**

**-against-**

**Index No. 104013/08**

**THE CITY OF NEW YORK,  
ABCO MAINTENANCE, INC. and JOHN DOE,**

**Defendants.**

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The following papers numbered 1 to 4 were fully submitted on the 4<sup>th</sup> day of January, 2012:

	Papers Numbered
Notice of Motion for Summary Judgment (Affirmation in Support).....	1
Affirmation in Opposition of Plaintiff Kathleen Ratz.....	2
City’s Affirmation in Opposition.....	3
Reply Affirmation.....	4

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Upon the foregoing papers, the motion for summary judgment of defendant ABCO Maintenance, Inc. (hereinafter “ABCO”) dismissing the complaints of plaintiffs Donna Caminiti and Kathleen Ratz on the grounds that it bears no liability for their injuries is granted, and the complaints and any cross claims against this defendant are hereby severed and dismissed.

This matter arises out of a two vehicle accident which occurred on December 16, 2007, on Forest Avenue, near the intersection of Richmond Avenue, Staten Island, New York. Plaintiffs, New York City Police Officers Donna Caminiti and Kathleen Ratz claim to have sustained extensive personal injuries when their police car (operated by Police Officer Donna Caminiti) skidded on ice and struck a snow plow owned and operated by defendant ABCO.<sup>1</sup> Officer Caminiti admits to losing control of the police vehicle, crossing over the double yellow lines on Forest Avenue, and colliding with the ABCO plow, which was positioned in the opposing lanes of traffic on Forest Avenue.<sup>2</sup>

Plaintiffs separately commenced these actions against the same defendants on September 26, 2008 (*see* ABCO’s Exhibit B), and on January 21, 2009, this Court consolidated both actions to the extent of joining them for purposes of discovery and trial.

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<sup>1</sup>At her October 15, 2009 EBT, plaintiff Caminiti described the happening of the accident as follows: “We took off in the right lane by Morningstar Road. There’s a light there. When we hit the dip my car started hydroplaning, veering left. I tried to gain control, couldn’t gain control, the car spun out of control. And then we hit several objects on the sidewalk...I don’t know the order ...but I hit a fire hydrant, I hit a pole, and [then] I hit a snow plow” (*see* defendant ABCO’s Exhibit F, pp 36-38).

<sup>2</sup>In her police accident report dated December 16, 2007 (ABCO’s Exhibit E), Officer Caminiti wrote that “[w]hile traveling on Forest Ave[nue] I slid on ice/slush causing me to loose [sic] control of the vehicle” before striking the snow plow.

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In moving for summary judgment in each action, ABCO claims through its driver, Charles Virga (*see* ABCO's Exhibit H), *inter alia*, that at the time of impact, the snow plow was completely stopped due to Virga's observation of the police vehicle proceeding towards him from the opposite direction, with its lights flashing (*id.* at p 39). ABCO also relies on the police accident report prepared by NYPD Sergeant Michael Miller based on personal observations and interviews conducted at the accident scene (*see* ABCO's Exhibits E, I) as further proof that it bears no liability for the accident.<sup>3</sup>

In opposition to the motion, plaintiff, Ratz, and defendant the City of New York (which is alleged to have contributed to the accident in failing to ensure that the subject police car was fully equipped with, *e.g.*, functional seatbelts) dispute whether the snow plow had, in fact, come to a complete halt, and argue that a question of fact exists as to whether an emergency existed and whether the response of ABCO's driver was reasonable under the circumstances. It is argued that these questions are for a jury to determine, which precludes an award of summary judgment.

As previously indicated, ABCO's motion for summary judgment dismissing the complaint in each action is granted.

Although the opposition is correct in stating the general rule, there are exceptional circumstances present in this case which warrant a different result. In Gonzalez v. City of New York

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<sup>3</sup>At his April 29, 2011 deposition wherein he read his accident report into the record, Sgt. Miller stated: "At time, place of occurrence, driver of vehicle number 1, [P.O. Caminiti], [was] driving westbound on Forest Avenue, at which time vehicle number 1 did slide on ice and slush causing the driver to lose control of vehicle number 1, which then struck a fire hydrant causing vehicle number 1 to slide into a snowplow. Vehicle number 2 [the snowplow] was parked at said location" (*see* ABCO's Exhibit I, p 38, ll 9-17).

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(295 AD2d 122), the undisputed facts indicate that a police car traveling at a high rate of speed on a wet road skidded out of control and, in a matter of seconds, crossed over into the opposing lanes of traffic before striking a New York City Transit Authority bus. In a pretrial motion, it was therein held that the Transit Authority was properly granted summary judgment dismissing the claims brought against it by its passengers (*id.*), noting that the facts as presented “sufficed to show, *prima facie*, the applicability of the emergency doctrine, and entitled respondent to summary judgment unless plaintiffs adduced evidence that the bus driver’s actions prior to the cross-over contributed to the emergency or that after the cross-over he could have taken one or more actions that would have avoided the accident or minimized plaintiff’s injuries” (*id.* at 122 [citations omitted]).

Likewise, here, it is undisputed that the vehicle in which plaintiffs were traveling skidded out of control and almost instantaneously crossed over into the opposing lanes of traffic before striking ABCO’s snow plow. Under these circumstances, whether the ABCO vehicle was stationary immediately prior to or at the time of impact is of no moment. In any event, the crossing-over of the skidding police vehicle as reflected in the deposition testimony and police reports constitute *prima facie* proof of ABCO’s freedom from negligence for the happening of this accident as a matter of law (*see Tsai v. Zong-Ling Duh*, 79 AD3d 1020).

In opposition, no triable issue of material fact has been raised as to ABCO’s liability for the conduct of its driver either before or after the crossing-over.

Accordingly, it is

ORDERED, that the motion of defendant ABCO Maintenance Company for summary judgment dismissing the complaint in each action as against it is granted, and it is further

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ORDERED, that the complaint and any cross claims asserted against this defendant in either action are hereby severed and dismissed; and it is further

ORDERED, that the Clerk enter judgment in accordance herewith.

E N T E R,

Dated: March 8, 2012

/s/

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Hon. Thomas P. Aliotta

J.S.C.