

<b>Makovoz v City of New York</b>
2021 NY Slip Op 31696(U)
May 21, 2021
Supreme Court, New York County
Docket Number: 155999/2020
Judge: J. Mabelle Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

*Justice*

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INDEX NO. 155999/2020

RONI MAKOVOZ,

MOTION DATE 10/13/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION, VINCENT  
USMAN, RIDWAN TEMITOPE ABASS

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 32

were read on this motion to/for JUDGMENT - SUMMARY.

Pending before the court is a motion filed by defendant VINCENT A. USMAN (“Usman” or the “movant”) seeking an order pursuant to CPLR Section 3212 granting summary judgment in favor of defendant Usman, dismissing the Complaint and all cross-claims on the grounds that there are no material questions of law or fact on the issue of liability. Upon the foregoing documents, and upon oral arguments heard by the undersigned on April 20, 2021, this motion is DENIED as premature, with leave to refile.

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [1<sup>st</sup> Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York

University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

This is a personal injury action involving a three-vehicle collision on the Brooklyn Bridge located at or near the entrance ramp to the FDR Drive located in New York, NY. The plaintiff was driving the first vehicle; movant Usman was driving the second vehicle; and co-defendant Abass was driving the third vehicle.

On October 12, 2020, Usman filed the instant motion for summary judgment, arguing that plaintiff, who was in front of Usman, came to a sudden stop and that Usman in turn was able to stop his car, which ended up “a few inches” away from plaintiff’s car. A few seconds later, Usman’s vehicle was hit from behind by co-defendant Abass’s vehicle, which moved Usman’s car forward and forced it to collide with plaintiff’s vehicle. Usman argued that plaintiff can not make out a prima facie case of negligence as against Usman (the movant).

On December 7, 2020, Plaintiff filed opposition papers. At that time, co-defendant Abass had not yet filed an Answer and accordingly, plaintiff argued in opposition that the motion was premature, as plaintiff needs to obtain discovery from defendant Abass to determine whether or not defendant Abass agreed with the version of the facts proffered by the movant. On December 8, 2020, movant Usman filed a reply to plaintiff’s opposition.

On December 9, 2020, co-defendants The City Of New York and the New York City Department of Transportation (collectively, the “City”) filed opposition papers. They also argued that Usman’s motion was premature and that discovery was needed to determine the issues of liability in this case, including the sequence of events leading up to impact in this motor vehicle accident. The City further argued that despite the movant’s affirmation that he was completely stopped at the time of impact, a fact-finder would have to determine “whether the movant driver was traveling at a reasonably safe distance behind the plaintiff’s vehicle before the time of impact.” On December 14, 2020, movant Usman filed a reply to the City’s opposition.

On December 23, 2020 co-defendant Abass filed an Answer. Pursuant to a stipulation on consent that enlarged the time for responsive filings on this motion,<sup>1</sup> Abass filed opposition papers to the instant motion on January 25, 2021. Abass argued that the movant failed to explain why he was only able to stop within “a few inches” of the rear of plaintiff’s vehicle if the movant had been maintaining a safe distance behind plaintiff’s vehicle, as required by N.Y. Vehicle & Traffic Law (“VTL”) § 1129. Abass also argued that “while it is true that evidence of a rear-end collision with a stopped vehicle constitutes a prima facie case of negligence on the part of the operator of the moving vehicle, the alleged negligence may be rebutted by evidence that the vehicle in front stopped suddenly.” On January 26, 2021, Usman filed a reply to Abass’s opposition.


Here, Abass filed an Answer on December 23, 2020 and submitted motion papers in opposition on January 25, 2021 (after the motion had been fully briefed). The fact that Abass rear-ended Usman may entitle Usman to summary judgment in Usman’s favor as against defendant Abass, but it does not necessarily entitle Usman to summary judgement in Usman’s favor as against the plaintiff. The plaintiff is entitled to discovery and does not have to adopt the alleged

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<sup>1</sup> The stipulation is NYCEF document #31.

facts of the circumstances of the collision as espoused by Usman. Moreover, in its opposition papers, Abass claims that there were wires in the roadway that may have contributed to the accident and the sequence of the impact, which is relevant to the issue of any alleged responsibility on behalf of the defendant City.

For the reasons stated above, this motion is DENIED. Parties are given leave to renew and file new motions for summary judgment upon completion of discovery.

5/21/2021		
DATE		J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE