

**Yu Zhou v Alessi**

2024 NY Slip Op 32371(U)

July 9, 2024

Supreme Court, New York County

Docket Number: Index No. 153805/2022

Judge: James G. Clynnes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

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YU ZHOU,

Plaintiff,

- v -

SALVATORE ALESSI, MELVYN MEDINA-MELO

Defendant.

INDEX NO. 153805/2022

MOTION DATE 01/15/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39, 50, 54, 55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 74, 76

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by Defendant Melvyn Medina-Melo ("Medina-Melo") for summary judgment pursuant to CPLR 3212 on the issue of liability is decided as follows:

Plaintiff seeks to recover for injuries allegedly sustained as a result of a May 15, 2021 motor vehicle accident between a vehicle owned and operated by Medina-Melo, which Plaintiff was a passenger within, and a vehicle owned and operated by Defendant Salvatore Alessi ("Alessi") on Yorktown Road near the intersection with the Croton Gorge Park Entrance.

To grant summary judgment, it must be clear that no material or triable issues of fact are presented (Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395 [1957]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (Winegrad v NY Univ. Med. Ctr., 64 NY2d 851 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action

or tender an acceptable excuse for his failure...to do [so]" (*Zuckerman v New York*, 49 NY2d 557, 560 [1980]). A defendant's motion for summary judgment opposed by a plaintiff must be decided on the version of the facts most favorable to the plaintiff (*Mullin v 100 Church LLC*, 12 AD3d 263, 264 [1st Dept 2004]).

In support of the motion, Medina-Melo relies on an affidavit in which he avers that as the owner of his vehicle, he was operating it as a driver for Lyft at the time of the accident. Plaintiff was a passenger in the rear seat of Medina-Melo's vehicle. Medina-Melo avers that he was traveling in the right-most lane on Yorktown Road near the intersection with Croton Gorge Park Entrance when Plaintiff had reached their intended destination. Noticing no shoulder or side area to pull over his vehicle, Medina-Melo avers that he brought his vehicle to a complete stop in the right most lane and turned on his vehicle hazard lights to warn other vehicles. Medina-Melo further avers that a few seconds after coming to a complete stop, Alessi's vehicle made impact with the rear of Medina-Melo's vehicle.

In opposition, Alessi submits, in pertinent part, an affidavit and a certified police report. Alessi relies in part on the certified police report which Alessi avers contains only Medina-Melo's statements and admissions and that Alessi did not make any statements to police.<sup>1</sup> Alessi avers that he was driving eastbound on Yorktown Road and was approaching the entrance of Croton Gorge Park at the time of the accident. Alessi avers that he was slowing down his vehicle because a vehicle was exiting the Croton Gorge Park. Once the vehicle cleared the intersection, Alessi avers that he observed Medina-Melo's vehicle moving westbound, in reverse with reverse lights on, at a high rate of speed towards Alessi's vehicle. Alessi further avers that he applied his vehicle's brakes and sounded the horn before the rear of Medina-Melo's vehicle made impact with the front of Alessi's vehicle.

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<sup>1</sup> The certified police report states that Medina-Melo's vehicle, "while backing westbound against traffic, struck" Alessi's vehicle which was traveling eastbound.

Plaintiff did not submit any materials in opposition of Medina-Melo's motion for summary judgment on the issue of liability.

In reply, Medina-Melo contends that Alessi does not provide admissible proof to rebut Medina-Melo's version of the accident. To defeat a motion for summary judgment, an opposing party must make a showing by producing evidentiary proof in admissible form, such as an affidavit (*see Zuckerman* 49 NY2d at 560). Alessi's affidavit raises a sufficient issue of fact as to how the accident occurred between the two vehicles. As well, statements made in a police report that are not denied by the party constitute an admission (*Estate of Mirjani v DeVito*, 135 AD3d 616, 617 [1st Dept 2016]; *see also Buchinger v Jazz Leasing Corp.*, 95 AD3d 1053 [2d Dept 2012]).

Medina-Melo's affidavit avers his vehicle was stopped when Alessi's vehicle impacted his from the rear. "A rear-end collision with a stopped vehicle, or a vehicle slowing down, establishes a prima facie case of negligence on the part of the operator of the rear-ending vehicle, which may be rebutted if that driver can provide a non-negligent explanation for the accident" (*Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473, 476 [1st Dept 2017] [internal citations omitted]). Alessi's affidavit and police report state that Medina-Melo was traveling westbound in reverse and the vehicle's reverse lights were on while Alessi traveled eastbound in the same lane, establishing an adequate non-negligent explanation for hitting Medina-Melo's vehicle in the rear. In his reply, Medina-Melo did not dispute the accuracy of the police report and solely relies on Medina-Melo's affidavit brought in support of the motion.

Defendant Medina-Melo's motion for summary judgment is denied because Defendant Alessi raises an issue of fact.

Accordingly, it is

**ORDERED** that the motion by Defendant Melvyn Medina-Melo for summary judgment on the issue of liability is DENIED; and it is further

ORDERED that any requested relief not specifically addressed herein has nonetheless been considered; and it is further

ORDERED that within 30 days of entry, Plaintiffs shall serve a copy of this Decision and Order upon the Defendant with Notice of Entry.

This constitutes the Decision and Order of the Court.

7/9/2024  
DATE

*James G. Clynes*  
JAMES G. CLYNES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
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