

At an IAS Term, Part 63, 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 3rd day of August 2018

P R E S E N T:

HON. ELLEN M. SPODEK, Justice

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HENRIETTA OKPALA,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 500130/2014

SEVERIAN ST. HILLEN and
MIDWOOD AMBULANCE & OXYGEN SERVICE, INC.,

Defendants.

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Papers

Numbered

Notice of Motion for Summary Judgment.....	<u>1</u>
Affirmation in Opposition	<u>2</u>
Exhibit J (video).....	<u>3</u>

Upon the foregoing papers, defendants Severian St. Hillen and Midwood Ambulance & Oxygen Service, Inc. (hereinafter Defendant Midwood), move for an order pursuant to CPLR § 3212, granting summary judgment against plaintiff on the issue of liability and on the issue of "serious injury" in accordance with New York Insurance Law § 5102. Plaintiff opposes this motion.

This case arises out of a motor vehicle collision that occurred between a vehicle driven by Plaintiff and an ambulance driven by Defendant Severian St. Hillen and owned by Defendant Midwood. On July 8, 2013, non-party Yanila Gonzalez's physician called for an ambulance to transport her from her primary care physician's office to the emergency room of Methodist

Hospital. In her testimony, Gonzalez asserts that while en route to Methodist Hospital, Midwood's ambulance sirens were turned on at least ten to fifteen minutes prior to the subject accident with Plaintiff's car.

Plaintiff argues that the Defendants were negligent in the operation of the ambulance. Plaintiff testified at her deposition that as plaintiff entered the intersection with Empire Boulevard, she was traveling at 15 to 20 miles per hour. Plaintiff was familiar with the area where the accident occurred, and drove in the area of the intersection at Empire Boulevard and Bedford Avenue three to four times per week. Plaintiff did not hear the sound of any horns or sirens. Plaintiff was looking straight ahead, and did not look left or right before entering the intersection. Plaintiff did not recall if her radio was on or off at the time, but denied that anything was distracting her. Plaintiff first observed the ambulance when it was approximately half a car length in front of her vehicle. Plaintiff hit her breaks and tried to swerve to the left to avoid a collision with Defendants' ambulance, but the front passenger side of Plaintiff's vehicle collided with the Defendants' ambulance.

Defendants' argue that the Plaintiff has failed to establish a *prima facie* case of negligence and Plaintiff is not entitled to the protection of New York Insurance law § 5102 because the Plaintiff failed to sustain a "serious injury."

"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 demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). Summary judgment is a drastic remedy which should not be granted when there is any significant doubt as to the existence of a triable issue of fact. *Zuckerman v. City of New York*, 49 NY2d 557 (1980).


An “emergency operation” is defined under New York Vehicle and Traffic Law § 114-b and includes “transporting a sick or injured person.” *Mulholland v. Nabisco*, 264 A.D.2d 411 (2d Dept. 1999), quoting VTL § 114-b. According to New York Vehicle and Traffic Law §1104, authorized emergency vehicles are exempt from certain traffic laws when they are involved in an emergency operation. *See* NY VTL § 1104. In this case, there are no questions of fact – As the Midwood Defendants were transporting Ms. Gonzalez, who was “sick or injured,” to a hospital emergency room, as a matter of law they were operating an emergency vehicle in an “emergency operation” at the time of the accident, and were therefore exempt from certain traffic laws while en route to Methodist Hospital.

It is well-established that in order to be held liable for a motor vehicle accident that occurs during an “emergency operation” under Vehicle and Traffic Law, a defendant’s conduct must be “the conscious or intentional doing of an act of unreasonable character in disregard of a known or obvious risk so great as to make it highly probable that harm would follow, and done with conscious indifference of the outcome.” *Sczerbiak v. Pilat*, 90 N.Y.2d 553, 557 (1997). In the case at bar, Defendants’ acts did not rise to the level of “reckless disregard,” and they cannot be held liable for the subject accident. The ambulance had a camera system on the dashboard, which recorded the interior of the ambulance, the driver’s view forward, and the sound. The ambulance was using its lights and sirens at the time of the accident as seen in the video. *See* exhibit J. The dashboard video establishes that Midwood Defendants’ vehicle was operating with lights and sirens activated at the time of the accident and plaintiff’s vehicle did not yield.

New York VTL § 1144(a) explains that a vehicle must yield the right of way for an emergency vehicle when at least one emergency light is visible and when “audible signals are sounded from any said vehicle” such as sirens, bells or air-horns, and must remain stopped until

the emergency vehicle has passed. It is clear from the video footage that the sirens were on at the time of—and well before—the subject accident. *See* exhibit J. Plaintiff does not indicate in her testimony that she yielded to the oncoming ambulance, which was an emergency vehicle in accordance with VTL § 1144(a). Therefore, Plaintiff was in violation of 1144(a), and was the proximate cause of the accident. Plaintiff failed to sustain her burden to show that there were issues of fact to defeat summary judgment. Therefore, Defendants' motion for summary judgment is granted. Plaintiff's complaint is dismissed. Any discussion of serious injury is moot as the motion for summary judgment on liability has been granted.

This constitutes the decision and order of the court.

ENTER 
JSC