

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Fox v. McClellan

2022 NY Slip Op 03819 (N.Y. Ct. App. 2022) · No. 231 CA 21-00469 · Decided June 10, 2022

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order denying the defendant's motion for summary judgment in a personal injury action arising from a vehicle striking a road construction worker. The court held that the defendant failed to establish as a matter of law that he faced a sudden and unexpected emergency under the emergency doctrine. The existence of an emergency and the reasonableness of the driver's response generally presented issues of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Smith, J.; Nemoyer, J.; Curran, J.; Bannister, J.
JURISDICTION	New York
DECIDED	June 10, 2022
DOCKET	231 CA 21-00469
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying his motion for summary judgment dismissing the amended complaint in a personal-injury action.
STANDARD OF REVIEW	Summary judgment is appropriate only when the movant establishes entitlement to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party. On the emergency-doctrine issue, the existence of an emergency and the reasonableness of the driver's response generally present issues of fact.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	James W. McClellan v. James A. Fox

TOPICS

- negligence
- personal injury
- summary judgment
- civil procedure
- construction law

PRACTICE AREAS

torts

negligence

personal injury

civil procedure

construction law

QUESTIONS PRESENTED

1. Whether defendant established as a matter of law that the emergency doctrine entitled him to summary judgment dismissing the amended complaint.
2. Whether Supreme Court properly denied defendant's motion for summary judgment despite the alleged insufficiency of plaintiff's opposition papers.

HOLDINGS

1. Defendant failed to establish as a matter of law that he was confronted with a sudden and unexpected emergency to which he did not contribute; therefore, summary judgment dismissing the amended complaint was properly denied.
2. Because defendant did not establish entitlement to judgment as a matter of law, the court properly denied summary judgment regardless of the sufficiency of plaintiff's opposition papers.

KEY QUOTATIONS

“recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context” ([*1])

“The existence of an emergency and the reasonableness of a driver's response thereto generally constitute issues of fact” ([*1])

FACTUAL BACKGROUND

Plaintiff was a member of a crew working on a road construction project when he was struck by a vehicle operated by defendant. Defendant testified that, while driving northbound, he observed construction work and a dump truck blocking his lane. As defendant edged or coasted past the dump truck while it was backing into the southbound lane, his vehicle struck plaintiff, whom defendant testified he had not seen before the impact.

PROCEDURAL HISTORY

Plaintiff commenced an action for damages arising from injuries sustained when defendant's vehicle struck him during a road construction project. Supreme Court, Monroe County, denied defendant's motion for summary judgment. The Appellate Division unanimously affirmed that order without costs.

DISPOSITION

affirmed

CASES CITED

- Caristo v. Sanzone, 96 N.Y.2d 172, 174 (2001)
- Dalton v. Lucas, 96 A.D.3d 1648, 1649 (4th Dep't 2012)
- Andrews v. County of Cayuga, 96 A.D.3d 1477, 1479 (4th Dep't 2012)
- White v. Connors, 177 A.D.3d 1250, 1252 (4th Dep't 2019)
- Jablonski v. Jakaitis, 85 A.D.3d 969, 970 (2d Dep't 2011)
- Anderson v. Krauss, 204 A.D.2d 1074, 1075 (4th Dep't 1994)
- Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-fourth-judicial-department/2022/fox-v-mcclellan-75zc83ka>