

Gomez v Cartagena

2018 NY Slip Op 34481(U)

April 13, 2018

Supreme Court, Bronx County

Docket Number: Index No. 31773/2017E

Judge: Howard H. Sherman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----x
Francisca Gomez,

Plaintiff

Decision and Order

Index No. 31773/2017E

-against-

Alexandra Hernandez Cartagena,

Defendant

Howard H. Sherman

J.S.C.

-----x
The following papers numbered 1 read on motion by PLAINTIFF for summary judgment submitted March 9, 2018

Notice of Motion , Affirmation , Exhibits A-D

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In the above-entitled action, Francisca Gomez (Gomez) seeks recovery for personal injuries alleged to have been sustained in a rear-end collision occurring September 7, 2017 on an entrance to the northbound Henry Hudson Parkway in Bronx County. At the time, she was the passenger of a motor vehicle being driven by Robinson Perez-Cristo, which while stopped in traffic on the entrance ramp, was impacted in the rear by a motor vehicle being driven by Alexandra Hernandez Cartagena .

To date, no Note of Issue has been filed.

Motion

Plaintiff moves for summary judgment on the issue of liability contending that that there is no issue of fact that the accident was solely caused by the culpable conduct of the defendant driver. Plaintiff attests that the Perez-Cristo vehicle was stopped in traffic

for five seconds when it was impacted in the rear by the defendant's vehicle . She also states that she was wearing a seatbelt at the time of the accident [Exhibit D]. The copy of the police accident report [Exhibit C] is uncertified, and as a consequence is not admissible here (see *Coleman v. Maclas*, 61 A.D.3d 569, 877 N.Y.S.2d 297 [1st Dept.2009]).

No opposition is interposed.

Discussion and Conclusions

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law , tendering sufficient evidence to demonstrate the absence of a material issues of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718 [1980]). To support the granting of such a motion , it must clearly appear that no material and triable issue of fact is presented , as the "drastic remedy should not be granted where there is any doubt as to the existence of such issues (*Braun v. Carey*, 280 App.Div. 1019) or where the issue is 'arguable' (*Barrett v. Jacobs*, 255 N.Y. 520, 522); 'issue-finding, rather than issue-determination, is the key to the procedure' (*Esteve v. Avad*, 271 App. Div. 725, 727). " *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, 144 N.E.2d 387 [1957].

It is settled that drivers must maintain safe distances between their cars and cars in front of them (Vehicle and Traffic Law § 1129 [a]) , and that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, "unless the driver of the following vehicle can provide

a non-negligent explanation, in evidentiary form, for the collision [citations omitted].”

Johnson v. Phillips, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 [1st Dept. 1999])

Upon consideration of the record here, as afforded all favorable inferences in favor of the non-moving defendant, the court finds that plaintiff has made the requisite showing that there is no material issue of fact that the one impact to the Perez-Cristo vehicle giving rise to her personal injury claim was caused solely by the culpable conduct of the defendant in failing to maintain a safe distance behind Perez-Cristo’s vehicle.

Plaintiff also demonstrates as a matter of law her lack of causative culpable conduct, and that the asserted defense predicated upon the failure to use a seat belt is without merit .

Accordingly, it is

ORDERED that the motion of plaintiff FRANCISCA GOMEZ be and hereby is granted on default and pursuant to CPLR 3212, and it is

ORDERED that summary judgment be entered in favor of plaintiff FRANCISCA GOMEZ as against Defendant on the issue of liability, and it is

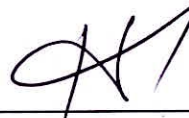
ORDERED that the first and the second affirmative defenses asserted by Defendant alleging the culpable conduct of plaintiff and the failure to use seat belts be and hereby are stricken , and it is

ORDERED that upon proof of service of a copy of this decision and order upon

Defendant and the completion of all discovery with respect thereto , and the filing of the Note of Issue, and the payment of the appropriate fee therefor , this matter be set down for an assessment of damages to include the issues of serious injury and proximate cause.

This shall constitute the decision and order of this court.

Dated: April 13, 2018



Howard H. Sherman