

Martinez v Advantage Wholesale Supply LLC
2018 NY Slip Op 34487(U)
September 5, 2018
Supreme Court, Bronx County
Docket Number: Index No. 20072/2018E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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FRANKLIN MARTINEZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 20072/2018E

ADVANTAGE WHOLESALE SUPPLY LLC and
MICHAEL GONZALEZ,

Defendants.
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John R. Higgitt, J.

Upon plaintiff's July 25, 2018 notice of motion and the affirmation and exhibits submitted in support thereof; defendants' August 1, 2018 affirmation in opposition; plaintiff's August 3, 2018 affirmation in reply and the exhibits submitted therewith; and due deliberation; plaintiff's motion for partial summary judgment is granted.

Plaintiff moves for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident, submitting plaintiff's affidavit in which he avers that his vehicle had been stopped on Bruckner Boulevard for several seconds due to heavy traffic and stationary vehicles ahead when suddenly his vehicle was struck from behind by defendants' vehicle.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring a judgment in favor of the stationary vehicle unless defendant proffers a nonnegligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman*, 56 AD3d 340, 340 [1st Dept 2008]). The happening of a rear-end collision is itself a prima facie case of negligence on the part of the rearmost driver

in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

The general rule regarding liability for rear-end accidents “has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera, supra*), “is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle” (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006] [citations omitted]). Plaintiff’s unrefuted affidavit was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

In opposition, defendants fail to submit evidence in admissible form sufficient to raise a triable issue of fact with respect to their negligence (*see Erkan v McDonald’s Corp.*, 146 AD3d 466 [1st Dept 2017]). Instead, they argue the motion is premature because depositions have not yet taken place.

That discovery remains outstanding does not warrant the denial of the motion, particularly where the opposition fails to indicate what discovery might be expected that would raise an issue of fact as to defendant’s liability (*see Doherty v City of New York*, 16 AD3d 124 [1st Dept 2005]). The opposition “advanced no non-speculative basis to believe that additional discovery might yield evidence warranting a different disposition” (*Rosario v N.Y. City Transit Auth.*, 8 AD3d 147, 148 [1st Dept 2004]). Defendants’ “mere expressions of hope” that disclosure might yield relevant information are insufficient to raise an issue of fact (*Piccinich v New York Stock Exch.*, 257 AD2d 438, 439 [1st Dept 1999]; *see also A & E Stores, Inc. v U.S.*

Team, Inc., 63 AD3d 486, 486-87 [1st Dept 2009] [“speculation that useful information may be learned during discovery does not constitute grounds for denying the motion”]).

As it is defendants themselves who have failed to submit any admissible evidence in opposition, their argument is not persuasive (*see* CPLR 3212[f]; *Woods v 126 Riverside Corp.*, 64 AD3d 422 [1st Dept 2009], *lv denied* 14 NY3d 704 [2010]). Given their failure to provide a non-negligent explanation for the collision and the failure to maintain a safe distance from plaintiff’s vehicle, any claimed lack of discovery does not warrant denial of the motion (*see Maynard v Vandyke*, 69 AD3d 515 [1st Dept 2010]).

Defendants having failed to rebut the presumption of their negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), the motion is granted.

The court notes that plaintiff did not seek to dismiss defendants’ affirmative defense of comparative default and that defense remains extant.

Accordingly, it is

ORDERED, that plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: September 5, 2018



John R. Higgitt, A.J.S.C.