

Fobbs v Griffin

2018 NY Slip Op 34489(U)

January 28, 2018

Supreme Court, Bronx County

Docket Number: Index No. 27651/2017E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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RITA FOBBS and GLENESSA RICHARDSON,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 27651/2017E

JERRY GRIFFIN, JR, ARY TRUCKING, LLC, JOSE
MENCIA BATISTA, MFM ENTERPRISES LLC and
JOSEPH MARIE,

Defendants.
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John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs allegedly sustained in a multi-motor vehicle accident that took place on September 4, 2016. Plaintiffs seek summary judgment on the issue of defendants’ liability for causing the subject motor vehicle accident. Defendant Joseph and defendants Batista and MFM Enterprises LLC (collectively, “the Batista defendants”) cross-move seeking dismissal of the action as against them. For the reasons that follow, plaintiffs’ motion is granted in part, defendant Joseph’s cross motion is granted, and the Batista defendants’ cross motion is denied.

Vehicle and Traffic Law § 1129(a) states that a “driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway” (*see Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*id.*). A rear-end collision establishes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

Plaintiffs submitted a copy of the pleadings, a certified police report and their affidavits.

Plaintiffs averred that they were traveling southbound on the Cross Bronx Expressway when the vehicle operated by defendant Joseph struck the rear of plaintiffs' vehicle. Plaintiffs further averred, however, that upon information and belief this was the result of the Batista defendants' vehicle having struck defendant Joseph's motor vehicle. Because there is no indication that the responding police officer witnessed the accident, plaintiffs failed to demonstrate the negligence of any defendant as a matter of law. Indeed, in reply, plaintiffs concede that there is no admissible evidence that defendant Joseph or the Batista defendants caused or contributed to the accident.

The Batista defendants cross-move for summary judgment, submitting the affidavit of defendant Batista, who avers that his vehicle was struck in the rear by the Griffin defendants' vehicle. Defendant Batista avers that the collision caused the Batista defendants' vehicle to strike a non-party's vehicle. Defendant Batista averred that his vehicle did not contact plaintiffs' vehicle. This affidavit, however, fails to establish the Batista defendants' entitlement to summary judgment, because it fails to affirmatively establish that they were not negligent or that their negligence did not contribute to plaintiff's injuries.

On her cross motion, defendant Joseph averred that at the time of the accident, she was travelling behind plaintiffs' vehicle when her vehicle was struck in the rear, which propelled her vehicle into plaintiffs' vehicle. Defendant Joseph satisfied her prima facie burden of establishing her entitlement to judgment as a matter of law on the issue of her lack of liability (*see* CPLR 3212[b]) and no party raised an issue of fact in opposition (*see Zuckerman, supra*).

Accordingly, it is

ORDERED, that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED, that the Batista defendants' cross motion for summary judgment is denied;

and it is further

ORDERED, that defendant Joseph's cross motion for summary judgment is granted; and
it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of
defendant Marie Joseph, sued herein as Joseph Marie, dismissing the complaint as against her
and all cross claims against her.

This constitutes the decision and order of the court.

Dated: January 24, 2018



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