

Osborn v Scalere

2018 NY Slip Op 34499(U)

December 20, 2018

Supreme Court, Bronx County

Docket Number: Index No. 30223/2017E

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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JESSE MICHAEL OSBORN,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30223/2017E

ANTHONY SCALERE and S&S ABSORBENTS, INC.,
Defendants.

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John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on August 17, 2017. The vehicle driven by defendant Scalere and owned by defendant S&S Absorbents, Inc., struck plaintiff’s vehicle in the rear while plaintiff’s vehicle was stopped. Plaintiff seeks partial summary judgment on the issues of defendants’ liability and his freedom from comparative fault. For the reasons that follow, plaintiff’s motion is granted.

“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]). A rear-end collision establishes 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]).

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.*).

Plaintiff satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings, an affidavit and a certified police report. Plaintiff averred that he was stopped on the Bruckner Expressway when the vehicle driven by defendant Scalere struck the back of plaintiff’s vehicle.

In opposition, defendants failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The affirmation of counsel alone is not sufficient to rebut plaintiff’s prima facie showing of entitlement to judgment as a matter of law (*see id.*).

Defendants argued that plaintiff’s motion should be denied as premature because no discovery has been conducted. However, plaintiff’s motion is not premature because “the information as to why [defendants’ vehicle] struck the rear end of plaintiff’s car reasonably rests within defendant driver’s own knowledge” (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (*see Castaneda, supra; Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Defendants thus failed to rebut the presumption of their negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), and failed to raise an issue of fact as to plaintiff’s comparative fault.

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issues of defendants' liability for causing the subject motor vehicle accident and plaintiff's lack of comparative fault is granted; and it further

ORDERED, that defendants' second and third affirmative defenses are dismissed.

This constitutes the decision and order of the court.

Dated: December 20, 2018



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