

Perez v Guerrero

2018 NY Slip Op 34502(U)

December 20, 2018

Supreme Court, Bronx County

Docket Number: Index No. 20759/2018E

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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NANCY PEREZ, JORGE ABREU PEREZ and TONIN
SANCHEZ,

DECISION AND ORDER

Plaintiffs,

Index No. 20759/2018E

- against -

FERNANDO GUERRERO, EMMANUEL TINEO,
PEDRO RAMIREZ and BRONX MERCHANT
FUNDING SERVICES LLC,

Defendants.
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John R. Higgitt, J.

This negligence action arises out of a chain reaction rear-end collision involving four vehicles on Westchester Avenue in Bronx County that occurred on September 19, 2016. At that time, the vehicle driven by Defendant Ramirez and owned by defendant Bronx Merchant Funding Services LLC (“the Ramirez defendants”) was stopped at a red traffic light behind plaintiffs’ vehicle, when the Ramirez defendants’ vehicle was struck in the rear by a vehicle driven by a non-party, which was struck by the vehicle driven by defendant Guerrero. The Ramirez defendants seek summary judgment on the ground that they are not liable for the accident. For the reasons that follow, the Ramirez defendants’ 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 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]).

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.*).

The Ramirez defendants satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of liability (*see CPLR 3212[b]*). The Ramirez defendants submitted a copy of the pleadings, a verified bill of particulars, a certified police report and the affidavit of defendant Ramirez. Defendant Ramirez averred that he was stopped for a traffic light for approximately 40 seconds behind plaintiffs’ vehicle when his vehicle was struck by a vehicle driven by a non-party driver, whose vehicle had been struck by the vehicle of defendants Guerrero and Tineo. The collision between the Ramirez defendants’ vehicle and the non-party driver’s vehicle propelled the former vehicle into plaintiffs’ vehicle.

In opposition, defendants Guerrero and Tineo and plaintiffs failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants Guerrero and Tineo and plaintiffs argue that the motion is premature because no discovery has taken place. However, the motion is not premature because the information as to why the accident occurred reasonably rests within the non-moving parties’ own knowledge and could be asserted in their own sworn statements (*see Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see also 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]).

Furthermore, plaintiffs argue that there is a question of fact as to whether the Ramirez defendants were stopped behind them at the time of the accident. Plaintiffs submit the affidavit of plaintiff Sanchez, in which he avers that when he stopped for the red light, he immediately looked back and did not see anyone behind his vehicle. He further avers that he had been stopped for approximately 30 seconds before the accident occurred. Plaintiffs argue that because plaintiff Sanchez's affidavit presents a different narrative of the accident, an issue of fact exists that precludes summary judgment in favor of the Ramirez defendants. Plaintiffs did not establish that plaintiff Sanchez kept the rear of his vehicle under constant observation, and this testimony is not necessarily inconsistent of the other parties' narrative.


Accordingly, it is

ORDERED, that the motion of defendants Ramirez and Bronx Merchant Funding Services LLC for summary judgment is granted; and it further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant Ramirez and Bronx Merchant Funding Services LLC dismissing the complaint as against them and all cross claim against them.

This constitutes the decision and order of the court.

Dated: December 20, 2018



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