

**Rose-Bonkougou v Brereton**

2018 NY Slip Op 34505(U)

November 13, 2018

Supreme Court, Bronx County

Docket Number: Index No. 21606/2018E

Judge: John R. Higgitt

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X  
DOREEN ROSE- BONKOUNGOU,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 21606/2018E

DESMOND G. BRERETON and NATALIE A.  
BARNETTE,

Defendants.

-----X

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 June 6, 2017. At the time of the accident, plaintiff was parked when the car operated by defendant Brereton and owned by defendant Barnette struck plaintiff’s vehicle from behind. Plaintiff now seeks partial summary judgment on the issue of defendants’ liability. For the reasons that follow, plaintiff’s 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]). The happening of a rear-end collision is itself a prima facie case of negligence of 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 her prima facie burden of establishing her 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 uncertified police report and her affidavit. Plaintiff’s affidavit sets forth sufficient detail as to how the accident occurred, namely that plaintiff’s vehicle was parked when the vehicle operated by defendant Brereton and owned by defendant Barnette impacted the rear end of plaintiff’s vehicle, without warning.

In opposition, defendants failed to raise a triable issue of material fact (*see Zuckerman v City of New York, supra*). The affirmation of counsel alone is not sufficient to rebut plaintiff’s prima facie showing of entitlement to summary judgment (*id.*). In addition, bald, conclusory allegations, even if believable, are not enough to withstand summary judgment (*see Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255 [1970]). Defendants argue that plaintiff’s motion should be denied as premature because no discovery has been conducted. However, plaintiff’s motion cannot be considered premature when “the information as to why [the 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]).

Furthermore, defendants argue that the motion should be denied because the plaintiff rely on the uncertified police report. Even if the accident report was not in admissible form, plaintiff's unrefuted affidavit was sufficient to meet her prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]). Moreover, while the police report might be inadmissible as hearsay (*see Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]), the statement by defendant regarding her break failure constitutes an admission (*see Cruz v Skeritt*, 140 AD3d 554 [1st Dept 2016]). Because defendants have 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 (and the court has not considered) dismissal of defendant's affirmative defense of comparative fault (*see CPLR 2214[a]*; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).


Accordingly, it is

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

ORDERED, that plaintiff's motion is otherwise denied.

This constitutes the decision and order of the court.

Dated: November 13, 2018

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