

Luciano v American United Transp., Inc.

2018 NY Slip Op 34510(U)

November 13, 2018

Supreme Court, Bronx County

Docket Number: Index No. 30980/2017E

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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DOMINGO LUCIANO and UBALDINA TEJADA-
LUCIANO,

DECISION AND ORDER

Plaintiffs,

Index No. 30980/2017E

- against -

AMERICAN UNITED TRANSPORTATION INC.,
RAUDO M. PEREZ, TAMARA M. CASTILLO and
JIMMY MERENTIS, JR.,

Defendants.
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John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that took place on October 20, 2017. Plaintiff had been a passenger in defendant Raudo Perez’s vehicle when defendant Tamara Castillo’s vehicle struck defendant Perez’s vehicle in the rear, propelling defendant Perez’s vehicle into defendant Jimmy Merentis’ vehicle. Defendant Merentis now seeks summary judgment dismissing plaintiffs’ complaint as against him, on the ground that he is not liable for the accident. For the reasons that follow, defendant Merentis’ motion for summary judgment 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 against 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.*).

Defendant Merentis made a prima facie showing of his entitlement to judgment as a matter of law. He submitted a copy of the pleadings, his affidavit, and the affidavit of defendant Perez. In his affidavit, defendant Merentis avers that he was stopped at the intersection of East 173rd Street and Boston Road so that pedestrians could pass in front of his vehicle when his vehicle was struck in the rear by defendant Perez’s vehicle. In his affidavit, defendant Perez avers that at the time of the incident, a vehicle driven by defendant Castillo struck his vehicle in the rear, propelling his vehicle into defendant Merentis’ vehicle.

Because no party opposed defendant Merentis’ motion, no triable issue of material fact has been raised in opposition to the motion.

Accordingly, it is

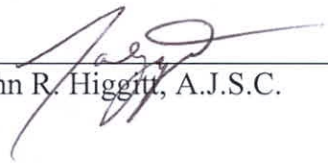
ORDERED, that defendant Merentis’ motion for summary judgment is granted, without opposition; and it further

ORDERED, the complaint as against him and all cross claim against him are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Jimmy Merentis, Jr. dismissing the complaint as against him and all cross claims against him.

This constitutes the decision and order of the court.

Dated: November 13, 2018



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