

Garcia v Salas

2018 NY Slip Op 34529(U)

December 31, 2018

Supreme Court, Bronx County

Docket Number: Index No. 28114/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

-----X
GARCIA, JOHAN

Index No. **28114/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

SALA, URIEL
-----X

A.J.S.C.

The following papers numbered **5** to **10** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **October 3, 2018** and duly submitted as No. **23** on the Motion Calendar of **October 3, 2018**.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	5-9
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	10
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, the plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the subject accident is granted, in accordance with the annexed decision and order.

Dated: **12/31/2018**

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance Settle Order
- Fiduciary Appointment Submit Order
- Referee Appointment

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

-----X
JOHAN GARCIA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28114/2018E

URIEL SALAS,

Defendant.

-----X

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 June 24, 2018. Plaintiff was stopped due to heavy traffic when defendant’s vehicle struck plaintiff’s vehicle in the rear. Plaintiff seeks partial summary judgment on the issues of defendant’s liability for causing the subject accident. For the reasons that follow, plaintiffs’ 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.*).

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 and his affidavit. Plaintiff averred that as he was stopped due to heavy traffic, defendant's vehicle struck the back of plaintiff's vehicle without warning.

In opposition, defendant failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendant argued that the motion should be denied because plaintiff failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party is competent evidence and may be sufficient to discharge the interested party's summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]).

Defendant also argued that the motion is premature because depositions are not complete. This motion, however, is not premature because "the information as to why the defendant's 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]). Because defendant failed to rebut the presumption of his 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 plaintiff's motion for summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: December 31, 2018



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