

Mejia v Vargas-Heredia

2018 NY Slip Op 34530(U)

December 17, 2018

Supreme Court, Bronx County

Docket Number: Index No. 25987/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

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

-----X
MEJIA, YLLULIANY, et ano.
- against -

Index No. 25987/2018E

VARGAS-HEREDIA, RODOLFO et ano.
-----X

Hon. JOHN R. HIGGITT,


A.J.S.C.

The following papers numbered 7 to 15 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on September 21, 2018 and duly submitted as No. 41 on the Motion Calendar of September 21, 2018.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	7-12
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	13-15
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

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

Dated: 12/17/2018

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
YLLULIANY MEJIA and NICHOLAS JR PAREDES,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 25987/2018E

RODOLFO VARGAS-HEREDIA and RVH EXPRESS
LLC,

Defendants.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that occurred on January 8, 2018. Plaintiffs’ vehicle was travelling on the Major Deegan Expressway in Bronx County when a vehicle operated by defendant Vargas-Heredia and owned by defendant RVH Express LLC rear-ended plaintiffs’ vehicle. Plaintiffs seek partial summary judgment on the issue defendants’ liability. 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.*).

Plaintiffs 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]). Plaintiffs submitted a copy of the pleadings and the affidavit of plaintiff Mejia. Plaintiff Mejia averred that on the day of the accident plaintiffs were traveling on the Major Deegan Expressway when, without warning, defendants’ car hit plaintiffs’ vehicle from behind, causing plaintiffs’ injuries.

In opposition, defendants failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants argue that plaintiffs’ motion should be denied as premature because no discovery has been conducted. However, plaintiffs’ 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]). 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 plaintiffs did not seek (and the court has not considered) dismissal of


defendants' affirmative defense of comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

Accordingly, it is

ORDERED, that plaintiffs' motion for partial summary judgment on the issue of the liability of defendants' for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: December 17, 2018



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