

Spigner v Dickson

2018 NY Slip Op 34531(U)

November 9, 2018

Supreme Court, Bronx County

Docket Number: Index No. 27543/2018E

Judge: John R. Higgitt

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

-----X
SPIGNER, SALUNA

Index No. 27453/2018E

- against -

Hon. JOHN R. HIGGITT,

DICKSON, GREGORY

A.J.S.C.

-----X

The following papers numbered 6 to 11 and 15 to 16 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **October 17, 2018** and duly submitted as No. **61** on the Motion Calendar of **November 7, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	6-11
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	15-16
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

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

Dated: 11/09/2018

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
SALUNA SPIGNER,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 27453/2018E

GREGORY DICKSON,

Defendant.

-----X

John R. Higgitt, J.

Upon plaintiff’s September 25, 2018 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendant’s November 5, 2018 affirmation in opposition; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the subject motor vehicle accident is granted.

In support of the motion, plaintiff submits her affidavit, in which she avers that the vehicle in which she was a passenger had been stopped in traffic for approximately one minute when it was rear-ended by defendant’s vehicle. Plaintiff also submits the uncertified police accident report generated from the accident, in which defendant reported to the responding officer that defendant mistakenly stepped on the gas instead of the brake pedal, causing him to strike the vehicle in which plaintiff was a passenger. Such statement is admissible as a party admission (*see Liburd v Lulgjuraj*, 156 AD3d 532 [1st Dept 2017]; *Pivetz v Brusco*, 145 AD3d 806 [2d Dept 2016]; *Penn v Kirsh*, 40 AD2d 814 [1st Dept 1972]; *Jackson v Trust*, 103 AD3d 851 [2d Dept 2013]; *see also Delgado v Martinez Family Auto*, 113 AD3d 426 [1st Dept 2014]).

“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 on the part of the rearmost driver in a chain confronted with a stopped or stopping vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

The general rule regarding liability for rear-end accidents “has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes” (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera, supra*), “is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle” (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006] [citations omitted]).

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 established entitlement to partial summary judgment on the issue of defendant’s negligence as a matter of law (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649 [1st Dept 2017]).

Defendant does not submit evidence in admissible form in opposition, but argues that the motion is premature inasmuch as no discovery has taken place. However, plaintiff’s motion cannot be considered as premature when “the information as to why defendant’s car 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 relevant 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]). Defendant thus failed to rebut the presumption of his negligence (see *Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]). Furthermore, the outstanding discovery defendant seeks bears on plaintiff's culpable conduct, if any. Plaintiff, however, is not required to establish her freedom from comparative negligence to be entitled to judgment on the issue of defendant's negligence (see *Rodriguez v City of New York*, 31 NY3d 312, 321 [2018]).

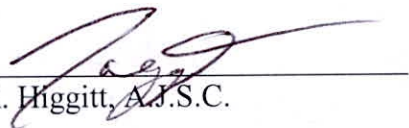
The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendant's affirmative defenses of comparative fault (see CPLR 2114[a]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendant's negligence is granted.

This constitutes the decision and order of the court.

Dated: November 9, 2018



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