

<b>Farrington v Cabrera</b>
2019 NY Slip Op 32321(U)
June 7, 2019
Supreme Court, Bronx County
Docket Number: 27374/2017E
Judge: John R. Higgitt
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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  
TEANKA FARRINGTON, CATINA RANDOLPH and  
GERLINE RANDOLPH,

DECISION AND ORDER

Plaintiffs,

Index No. 27374/2017E

- against -

SANDRA CASTILLO CABRERA,

Defendant.

-----X

John R. Higgitt, J.

Upon plaintiff Farrington’s March 28, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendant’s April 3, 2019 affirmation in opposition; plaintiff Farrington’s April 26, 2019 affirmation in reply; and due deliberation; plaintiff Farrington’s motion for dismissal of defendant’s counterclaim against her is granted.

This is a negligence action to recover damages for personal injuries plaintiffs allegedly sustained in a motor vehicle accident that took place on April 29, 2017. Plaintiff Farrington seeks dismissal of defendant’s counterclaim alleging plaintiff Farrington’s negligence in causing the accident. In support of her motion, plaintiff Farrington submitted the pleadings and the transcripts of the parties’ deposition testimony.

Plaintiff Farrington testified at deposition that at the time of the accident, she was travelling on the Bronx River Parkway near Pelham Parkway in Bronx County when she came to a stop due to heavy traffic. After being stopped for about 20 to 30 seconds, her vehicle was struck in the rear by defendant’s vehicle. Plaintiff Farrington also relies on defendant’s deposition testimony to demonstrate that the vehicles were traveling in a stop-and-go traffic and that, at the time of the accident, the vehicle operated by plaintiff Farrington was stopped.

“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 constitutes 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 (*see id.*).

In opposition to plaintiff Farrington’s prima facie showing of entitlement to judgment as a matter of law, defendant failed to raise a triable issue of fact. In opposition, defendant merely challenged the admissibility of the deposition transcripts. Plaintiff Farrington may rely on the transcript of her own deposition, although unsigned, because the transcript was certified as accurate and defendant does not challenge the accuracy of the testimony (*see Franco v Rolling Frito-Lay Sales, Ltd.*, 103 AD3d 543 [1st Dept 2013]). Furthermore, defendant’s unsigned but certified deposition testimony constituted an admission (*see Morchik v Trinity Sch.*, 257 AD2d 534 [1st Dept 1999]).

Accordingly, it is

ORDERED, that plaintiff Farrington's motion for dismissal of defendant's counterclaim against her is granted; and it is further

ORDERED, that defendant's counterclaim is dismissed.

The parties are reminded of the July 29, 2019 pretrial conference before the undersigned.

This constitutes the decision and order of the court.

Dated: June 7, 2019

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