

Bing v Bobby's Bus Co.

2019 NY Slip Op 35022(U)

October 8, 2019

Supreme Court, Bronx County

Docket Number: Index No. 34373/2018E

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: I.A.S. PART 14

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SUSAN BING,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 34373/2018E

BOBBY'S BUS COMPANY, KLEBERT SARA and
BOBBY'S BUS CO. INC.,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff's May 31, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' August 13, 2019 affirmation in opposition; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident and for dismissal of defendants' affirmative defense of plaintiff's culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on May 10, 2019. Plaintiff seeks summary judgment on the issue of defendants' liability and dismissal of defendants' first affirmative defense. In support of her motion, plaintiff submitted the pleadings and her affidavit. Plaintiff averred that at the time of the accident she was a passenger in the vehicle operated by non-party driver Jimenez, which was stopped due to a red traffic light when defendants' vehicle struck the rear of the vehicle occupied by plaintiff.

"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 (*id.*).

Plaintiff made a prima facie showing of entitlement to judgment as a matter of law.

Defendants failed to timely oppose plaintiff’s motion (*see Senise v Mackasek*, 174 AD2d 522, 551 [1st Dept 1991]; *Romeo v Ben-Soph Food Corp.*, 146 AD2d 688, 690 [2d Dept 1989]). Even considering the untimely opposition, defendants failed to raise a triable issue of fact as to their liability. The affirmation of counsel alone is not sufficient to rebut plaintiff’s prima facie showing of entitlement to summary judgment. In addition, bald, conclusory allegations, even if believable, are not enough to withstand summary judgment (*see Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255 [1970]).

The aspect of plaintiff’s motion seeking dismissal of defendants’ first affirmative defense alleging plaintiff’s comparative fault is granted. Under the circumstances, as an “innocent passenger” plaintiff is entitled to dismissal of defendants’ affirmative defense of comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

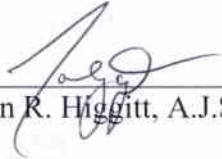
ORDERED, plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the accident and dismissal of defendants' affirmative defense alleging plaintiff's culpable conduct is granted; and it is further

ORDERED, that defendants' first affirmative defense alleging plaintiff's comparative fault is dismissed.

The parties are reminded of the January 10, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 8, 2019



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