Diaz-Sanchez v Oliver
2019 NY Slip Op 35033(U)
October 28, 2019
Supreme Court, Bronx County
Docket Number: Index No. 22433/2019E
Judge: John R. Higgitt

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

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YAJAIRA DIAZ-SANCHEZ,

Plaintiff,

- against -

JAMALL K. OLIVER and TECHNOLOGY SOLUTIONS INC.,

Defendants.

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DECISION AND ORDER

Index No. 22433/2019E

John R. Higgitt, J.

Upon plaintiff's June 14, 2019 notice of motion and the affirmation, affidavit and exhibit submitted in support thereof; defendants' August 15, 2019 affirmation in opposition; plaintiff's September 12, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on June 1, 2016. In support of her motion, plaintiff submits the pleadings, the police accident report, and her affidavit. Plaintiff averred that at the time of the accident she was stopped due to traffic when her vehicle was struck in the rear by defendants' vehicle. Plaintiff averred that she came to a stop behind a non-party driver after the driver brought his vehicle to a sudden stop, causing her to stop her vehicle. After being stopped for about five seconds, defendants' vehicle struck the rear of her vehicle.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent 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.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, 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]).

Defendants challenge the admissibility of the police accident report. However, even if the accident report was not in admissible form, plaintiff's unrefuted affidavit was sufficient to meet her prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Defendants also assert that the motion should be denied because at the time of the accident defendant Oliver was confronted with an emergency situation when plaintiff made a sudden stop. Generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle*

Cab Corp., 147 AD3d 649 [1st Dept 2017]). Thus, 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]). Additionally, "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). The principle that a claim of a sudden stop by the rear-ended vehicle is insufficient to constitute a non-negligent explanation for a hit-in-the-rear accident has particular force when the accident occurs on a local public roadway in the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]).

Defendants' argument that the emergency doctrine applies in this litigation is without merit. Defendants are precluded from invoking the emergency doctrine as a defense because they failed to include it as an affirmative defense in their answer (*see Bello v Transit Auth.*, 12 AD3d 58, 61 [2d Dept 2004]). In any event, the emergency doctrine applies when a defendant provides evidence that he or she was confronted with a sudden and unexpected situation that leaves little or no time for reflection or deliberation and that his or her reaction was reasonable under the circumstances (*see Caristo v Sanzone*, 96 NY2d 172 [2001]; *see also Ferrer v Harris*, 55 NY2d 285 [1982]). The emergency doctrine is typically inapplicable to routine rear-end traffic accidents (*see Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]).

The court notes that plaintiff 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 plaintiff's motion for summary judgment on the issue of defendants' liability is granted.

The parties are reminded of the December 13, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court

Dated: October 28, 2019

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