

Hatcher v Rivera

2019 NY Slip Op 35036(U)

November 19, 2019

Supreme Court, Bronx County

Docket Number: Index No. 31477/2018E

Judge: John R. Higgitt

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

-----X
HATCHER, JR., JOHNS

Index No. 31477/2018E

- against -

Hon. JOHN R. HIGGITT,
A.J.S.C.

RIVERA, JAYME ADELQUI, et ano
-----X

The following papers numbered 13 to 25 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on September 24, 2019 and duly submitted as No. 43 on the Motion Calendar of October 24, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	13-19
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	21-23
Replying Affidavit and Exhibits	24-25
Filed Papers	
Memoranda of Law	
Stipulations	20

Upon the foregoing papers, 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 defenses alleging plaintiff's culpable conduct and the emergency doctrine is granted in part, in accordance with the annexed decision and order.

Dated: 11/19/2019

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

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

-----X
JOHNS HATCHER, JR.,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 31477/2018E

JAYME ADELQUI RIVERA and VEGA
TRANSPORTATION CO., INC.,

Defendants.

-----X

John R. Higgitt, J.

Upon plaintiff’s August 27, 2019 notice of motion and the affirmation, affidavit, exhibits and memorandum of law submitted in support thereof; defendants’ October 17, 2019 affirmation in opposition and the exhibit submitted therewith; plaintiff’s October 23, 2019 affirmation in reply; 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 defenses alleging plaintiff’s culpable conduct and the emergency doctrine is granted in part.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a multi-motor vehicle accident that took place on August 3, 2017. In support of his motion, plaintiff submitted the pleadings, the police accident report and his affidavit. Plaintiff averred that at the time of the accident he had to come to a stop due to a red traffic signal when his vehicle was struck in the rear by defendants’ vehicle.

“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’s prima facie showing of entitlement to judgment as a matter of law on the issue of their liability, defendants, who submitted the conclusory affidavit of defendant Rivera, failed to raise a triable issue of fact. Defendant Rivera averred that at the time of the accident the traffic signal was green, not red, and that the accident occurred because the vehicle in front of him (plaintiff’s vehicle) came to a sudden stop. Defendant Rivera also averred that once the vehicle ahead of him came to a sudden stop, he was unable to stop his vehicle because his vehicle encountered an elevated patch of pavement, causing his vehicle’s brakes to lock up.

Defendants’ averments fail to raise a triable issue of fact as to defendants’ liability. Regardless of whether the traffic light was green or red, defendant Rivera failed to maintain a reasonably safe distance between his vehicle and the vehicle directly in front of him. “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 [2nd Dept 2010]).

Defendants’ assertion that the vehicle ahead had stopped short, causing the accident, does not raise a triable issue of fact as to defendants’ liability. 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]). Thus, 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” (*see Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]). The sudden-stop principle has particular force where, as here, 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 fail to provide any evidence that, at the time of the accident, the brakes on his vehicle failed or that the failure of the brakes was unanticipated (*see Normoyle v New York City Transit Authority*, 181 AD2d 498 [1st Dept 1992]), and defendant Rivera had a duty drive his vehicle with reasonable care “with regard to the actual and potential hazards existing from road and traffic conditions” (*see Dupont v Reisner*, 208 AD2d 375 [1st Dept 1994]).

Defendants also argue that the motion is premature because depositions have not been completed. This motion, however, is not premature because “the information as to why the 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 2007]; *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]).

The aspect of plaintiff’s motion for dismissal of defendant’s seventh affirmative defense of the emergency doctrine is granted. Defendant Rivera’s affidavit demonstrates that he was not confronted with a qualifying emergency situation at the time the accident occurred (*see Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]).

As to the aspect of plaintiff's motion seeking dismissal of defendants' second affirmative defense alleging plaintiff's comparative fault, the court cannot say on this pre-discovery motion that, as a matter of law, plaintiff was free of comparative fault. Defendant Rivera's affidavit suggests that plaintiff may bear some fault for the accident.

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking dismissal of defendants' seventh affirmative defense alleging the emergency doctrine is granted and that defense is dismissed; and it is further

ORDERED, that plaintiff's motion is otherwise denied.

The parties are reminded of the December 20, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 19, 2019



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