Pryce v Sanchez
2019 NY Slip Op 35047(U)
November 1, 2019
Supreme Court, Bronx County
Docket Number: Index No. 27533/2019E
Judge: John R. Higgitt

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

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CYNTHIA C. PRYCE,

Plaintiff,

- against -

DOLLYS C. SANCHEZ,

Defendant.

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DECISION AND ORDER

Index No. 27533/2019E

John R. Higgitt, J.

Upon plaintiff's September 30, 2019 notice of motion and the affirmation, affidavit, exhibits and memorandum of law submitted in support thereof; defendant's October 23, 2019 affirmation in opposition; plaintiff's October 28, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the accident is granted.

In support of the motion, plaintiff submits her affidavit in which she avers that she brought her vehicle to a gradual stop in traffic, and that her vehicle was thereafter struck in the rear by defendant's 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]). 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]). The court notes that this accident occurred on a local public roadway within the City of New York (*see Animah v Agyei*, Misc3d 783 [Sup Ct, Bronx County 2019]).

Despite the lack of a police accident report (*see Harris v Manhattan & Bronx Surface Transit Operating Auth.*, 138 AD2d 56 [1st Dept 1988]),[1] plaintiff's unrefuted affidavit was sufficient to meet her prima facie burden (*see Garcia v McCrea*, 170 AD3d 513 [1st Dept 2019]; *Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]), and defendant failed to raise an issue of fact. In opposition, defendant submitted the affirmation of counsel, which is insufficient to defeat plaintiff's prima facie showing (*see GTF Marketing, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965 [1985], *citing Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Defendant asserts that the motion is premature because depositions have not yet been conducted. The motion, however, is not premature because "the information as to why defendant's 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 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 evidence during the discovery process is

[1] The accident report submitted by plaintiff was prepared by her, and not by a responding police officer, and was, in any event, inadmissible.

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]). "[D]efendant, as the driver, has knowledge of how the accident occurred and did not show any need for discovery on that issue" (*Estate of Bachman v Hong*, 169 AD3d 436, 437 [1st Dept 2019]).

Defendant having failed to rebut the presumption of her negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), the motion is granted.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendant's affirmative defenses regarding plaintiff's culpable conduct (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident is granted.

The parties are reminded of the March 6, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 1, 2019

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