

Sarowar v Viejo

2019 NY Slip Op 35048(U)

October 30, 2019

Supreme Court, Bronx County

Docket Number: Index No. 20958/2019E

Judge: John R. Higgitt

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

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SHARIF SAROWAR,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 20958/2019E

FERNANDO PORTO VIEJO, C. A. PORTO VIEJO
GUACHN, YOMIRA PENELOPE CASTILLO,
RAMATOULAYE DIALLO, MATHEW
O'DONOGHUE, NETWORK INFRASTRUCTURE INC.,
and THERESA RAJHEAN PATTERSON,

Defendants.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a multi-motor vehicle accident that occurred on December 15, 2017. Defendant Castillo seeks summary judgment dismissing the complaint as against her and all cross claims against her. Plaintiff cross-moves, seeking summary judgment on the issue of defendants' liability for causing the subject accident. For the reasons that follow, defendant Castillo's motion for summary judgment is granted, and plaintiff's cross motion is granted in part.

In support of her motion for summary judgment, defendant Castillo submits the pleadings, the police accident report, and her affidavit. Defendant Castillo averred that she was involved in a six-vehicle motor vehicle accident in which she was the third vehicle from the front. Defendant Castillo was stopped behind defendant Porto Viejo's vehicle (the second vehicle from the front), which was standing behind plaintiff's vehicle, which was the lead vehicle in the chain. Defendant Castillo averred that, as she was stopped for about three seconds due to the other vehicles stopped ahead of her, she felt a heavy impact on the rear of her vehicle, causing her vehicle to strike defendant Porto Viejo's vehicle. Defendant Castillo asserts that, as

the third vehicle in the chain, she is not liable for the accident because she was propelled into defendant Porto Viejo's vehicle by the vehicle behind her (defendant Diallo's vehicle).

In support of his cross motion, plaintiff submitted the pleadings, the police accident report, and his affidavit. Plaintiff averred that at the time of the accident he was stopped due to a stop sign controlling his direction of travel when he suddenly felt multiple, successive impacts to the rear of his 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 of 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.*).

Defendant Castillo made a prima facie showing of entitlement to judgment as a matter of law dismissing the complaint as against her and the cross claims against her.

In opposition to defendant Castillo's motion, the non-moving parties assert that that the motion should be denied because defendant Castillo failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party is competent evidence and may be sufficient to discharge the interested party's summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]).

The non-moving defendants further assert that the motion is premature because depositions have not been completed. The motion, however, is not premature because "the information as to [how the accident occurred] reasonably rests within [the non-moving defendants'] drivers' 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 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]). Notably, the non-moving defendants did not provide affidavits in connection with this motion, and no reason was given for their failure to do so.

Given the foregoing, and given that defendant Castillo made a prima facie showing of her entitlement to judgment as a matter of law on the issue of liability, and neither plaintiff nor the non-moving defendants raised a triable issue of fact as to defendant Castillo's liability, defendant Castillo's motion is granted.

With respect to plaintiff's cross motion, plaintiff has obtained a default judgment against the rearmost driver in the chain, defendant Patterson (*see Motion sequence No. 2*) (*see Cabrera v Rodriguez, supra*). Plaintiff has not demonstrated, prima facie, that any other driver in the chain was negligent. However, as the lead vehicle in the chain collision, plaintiff bears no comparative

fault for the accident (*see Soto-Marquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Thus, defendants' affirmative defenses alleging plaintiff's culpable conduct are dismissed.

Accordingly, it is

ORDERED, that defendant Castillo's motion for summary judgment is granted, and the complaint as against her and the cross claims against her are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Castillo dismissing the complaint as against her and the cross claims against her; and it is further

ORDERED, that the aspect of plaintiff's cross motion for partial summary judgment on the issue of the liability of defendants Porto Viejo, Guachn, Diallo, O'Donoghue and Network Infrastructure is denied; and it is further

ORDERED, that the aspect of plaintiff's cross motion seeking summary judgment dismissing the affirmative defenses of comparative fault are granted, and defendants' affirmative defenses alleging plaintiff's culpable conduct are dismissed.

The parties are reminded of the November 15, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 30, 2019



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