

Ramirez-Cruz v Montgomery-Giles

2019 NY Slip Op 35055(U)

November 7, 2019

Supreme Court, Bronx County

Docket Number: Index No. 31909/2018E

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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MARLEN RAMIREZ-CRUZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 31909/2018E

VIJAY MONTGOMERY-GILES,

Defendant.

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John R. Higgitt, J.

Upon plaintiff’s June 12, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendant’s August 26, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff’s September 26, 2019 affirmation in reply; plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the subject accident and for dismissal of defendant’s first affirmative defense alleging plaintiff’s culpable conduct is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on June 19, 2018. In support of her motion, plaintiff submitted the pleadings, the police accident report, and her affidavit.

Plaintiff averred that she was stopped waiting for an opportunity to make a left turn on a local Bronx roadway when defendant’s vehicle struck the rear of her vehicle.

Defendant averred that at the time of the accident she was traveling behind plaintiff’s vehicle when plaintiff made a sudden stop, causing the accident.

“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 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]). 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.*).

In opposition to plaintiff’s prima facie showing of entitlement to judgment as a matter of law on the issue of liability, defendant failed to provide a non-negligent explanation for the accident or otherwise raise a triable issue of fact as to her liability.

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 court notes too that the accident occurred on a local public roadway within the City of New York (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]). Thus, defendant's claim that plaintiff made a sudden stop is insufficient to raise a triable issue of fact.

Defendant further asserts that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the 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 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]). As discussed above, defendant's conclusory explanation regarding how the accident occurred does not afford defendant a non-negligence explanation, and defendant has not demonstrated that discovery might yield evidence relevant to the issue of whether defendant was negligent and whether that negligence was a proximate cause of the accident.

Defendant also challenged 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 his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).¹

As to the aspect of plaintiff's motion seeking dismissal of defendant's first affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing that she bears no such fault (*see Soto-Marroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendant

¹ The report appears to contain a party admission by defendant that she struck the rear of plaintiff's vehicle.

failed to raise a triable issue of fact, the aspect of plaintiff's motion seeking dismissal of defendant's first affirmative defense alleging plaintiff's comparative fault is granted.

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendant's liability is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking the dismissal of defendant's first affirmative defense is granted, and that defense is dismissed.

The parties are reminded of the November 22, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 7, 2019



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