

Silva v Castro

2019 NY Slip Op 35062(U)

November 27, 2019

Supreme Court, Bronx County

Docket Number: Index No. 20320/2019E

Judge: John R. Higgitt

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

-----X
JOSE L. SILVA, JR.,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 20320/2019E

ANYELO M. GENAO CASTRO, P & P FREIGHT
SERVICES INCORPORATED and FEDEX GROUND
PACKAGE SYSTEM, INC.,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff's September 17, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' October 25, 2019 affirmation in opposition¹; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject accident and dismissal of defendants' affirmative defenses 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 October 24, 2018. In support of his motion, plaintiff submits the pleadings, the certified police accident report and his affidavit.

Plaintiff averred that when the light at which his vehicle had been stopped turned green, he proceeded slowly forward when defendants' vehicle struck the rear of his vehicle. Plaintiff also submits the police accident report containing defendant Castro's admission that he failed to notice that plaintiff's vehicle was slowing and he struck it in the rear (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

¹ Defendants opposition was untimely; thus, the court has not considered it.

“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]). 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.*).

Plaintiff made a prima facie showing that defendants violated Vehicle and Traffic Law § 1129 and that such violation was a proximate cause of the accident.

Defendants failed to timely oppose plaintiff’s motion (*see Senise v Mackasek*, 174 AD2d 522, 551 [1st Dept 1991]; *Romeo v Ben-Soph Food Corp.*, 146 AD2d 688, 690 [2d Dept 1989]). Even considering the untimely opposition, 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]).

As to the aspect of plaintiff’s motion seeking dismissal of defendants’ affirmative defense alleging plaintiff’s comparative fault, plaintiff made a prima facie showing that he bears no such fault (*see Soto-Marouquin v Mellet*, 63 AD3d 449 [1st Dept 2009]), and defendants failed to raise an issue of fact.

Accordingly, it is


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

ORDERED, that the aspect of plaintiff's motion seeking dismissal of defendants' fifth affirmative defense alleging plaintiff's comparative fault is granted, and that defense is dismissed.

The parties are reminded of the March 20, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 27, 2019



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