

Aybar v Krasdale Foods, Inc.

2019 NY Slip Op 35064(U)

October 25, 2019

Supreme Court, Bronx County

Docket Number: Index No. 24516/2019E

Judge: John R. Higgitt

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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
JAVIER AYBAR,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 24516/2019E

KRASDALE FOODS, INC., MTLR CORP. and
TERRELL W. ROSE,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff's August 14, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' September 6, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's September 13 affirmation in reply; 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' first affirmative defense alleging plaintiff's culpable conduct is denied.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on December 15, 2017. In support of his motion, plaintiff submits the pleadings, the police accident report and his affidavit.

Plaintiff averred that he was traveling on Brandt Place near its intersection with University Avenue in Bronx County when he had to come to a stop due to a red traffic signal. Plaintiff averred that as his light turned green, defendants' vehicle, which was traveling on University Avenue, failed to stop at the red traffic light controlling its direction of travel and struck plaintiff's vehicle as defendants' vehicle made a sharp left turn.

In opposition, defendant Rose averred that at the time of the accident he was traveling on University Avenue with the traffic signal in his favor. Defendant Rose averred that as he

approached the intersection he made a left turn onto Brandt Place, with the green traffic light still in his favor, when plaintiff's vehicle moved forward and struck the rear of his truck.

Vehicle and Traffic Law § 1141 states that "[t]he driver of a vehicle intending to turn to the left within an intersection... shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard" (*see Cardona v Fiorentina*, 149 AD3d 495, 495 [1st Dept 2017]). A driver who has the right of way is entitled to anticipate that a vehicle turning left will obey the traffic laws requiring the left-turning vehicle to yield the right of way (*see Dinham v Wagner*, 48 AD3d 349, 350 [1st Dept 2008]). Furthermore, under Vehicle and Traffic Law § 1111, any vehicle having a steady red traffic signal should stop at a clearly marked stop line and should remain stopped until an indication to proceed is shown, and it is safe to do so.

Based on his affidavit and defendant Rose's police-report admission, plaintiff made prima facie showing of entitlement to judgment as a matter of law on the issue of defendants' liability. In opposition, defendants raised triable issues of fact. Defendant Rose's detailed affidavit raises triable issues of fact regarding which driver (or drivers) is responsible for the accident. Contrary to plaintiff's contention, defendant Rose's affidavit is not necessarily materially inconsistent with his police-report admission. Defendant Rose's admission that his rear tires struck plaintiff's vehicle is not necessarily inconsistent with Rose's affidavit statement that the impact between the two vehicles was caused by plaintiff's conduct; the rear tires of Rose's vehicle may have struck plaintiff's vehicle because plaintiff operated his vehicle in a negligent manner. In light of the principles that evidence must be viewed in the light most favorable to the non-moving party, that issue finding (not issue determination) is the key to the summary judgment procedure and that court cannot make credibility determinations on

summary judgment, the court will not lightly find that a party's affidavit raises nothing more than a feigned issue of fact.

The conflicting affidavits submitted in connection with this motion and the pre-deposition posture of this action, warrant denial of plaintiff's motion without prejudice to renewal upon the filing of the note of issue and certificate of readiness.

Accordingly, it is

ORDERED, that plaintiff's motion is denied without prejudice to renewal upon the filing of the note of issue and certificate of readiness.

The parties are reminded of the February 28, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 25, 2019



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