

Delgado v Santiago

2019 NY Slip Op 35067(U)

November 8, 2019

Supreme Court, Bronx County

Docket Number: Index No. 26985/2019E

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
YOLANDA DELGADO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26985/2019E

SIGFREDO L. SANTIAGO and LORINDA
ENTERPRISES, LTD,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff's August 4, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' September 3, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's September 22, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject accident is granted.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that occurred on March 12, 2019. In support of her motion, plaintiff submitted the pleadings, the police accident report, and her affidavit.

Plaintiff averred at the time of the accident she was crossing Newtown Road at its intersection with 42nd Street in Queens County within the crosswalk when she was struck by defendants' vehicle. Plaintiff further testified that she was approximately three-quarters of the way across Newtown Road when defendants' vehicle struck her.

Plaintiff made a prima facie showing that defendants violated Vehicle and Traffic Law § 1146 by failing to keep a proper lookout, failed to exercise due care to avoid striking plaintiff, and otherwise failed to operate his vehicle in a reasonably safe manner.

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, defendants failed to raise a triable issue of fact. 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]).

Defendants argue that the motion should be denied because plaintiff 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]).

Defendants further assert that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to [how] the [accident occurred] 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]). Notably, defendants did not provide an affidavit in connection with this motion, and no reason was given for their failure to do so.

Furthermore, defendants' argument that plaintiff may not have kept a proper lookout relates to the issue of plaintiff's comparative fault and does not preclude summary judgment in

favor of plaintiff on the issue of defendants' liability (*see Rodriguez v City of New York*, 31 NY3d 212, 223 [2018]).

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defense of comparative fault (*see* CPLR 2214[a]).

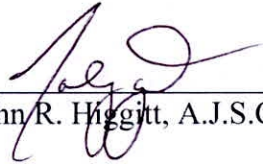
Accordingly, it is

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

The parties are reminded of the March 13, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 8, 2019



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