

Stephenson v Ardovini

2019 NY Slip Op 35073(U)

November 7, 2019

Supreme Court, Bronx County

Docket Number: Index No. 30155/2019E

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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PATRICIA STEPHENSON,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30155/2019E

JOHN V. ARDOVINI and STEPHANIE ARDOVINI,

Defendants.

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John R. Higgitt, J.

Upon plaintiff’s October 2, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants’ October 7, 2019 affirmation in opposition; plaintiff’s October 11, 2019 affirmation in reply and the exhibits submitted therewith; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the subject accident and for dismissal of defendants’ affirmative defenses alleging plaintiff’s comparative fault and lack of personal jurisdiction 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 August 19, 2019. In support of her motion, plaintiff submitted the pleadings, the police accident report, and her affidavit. Plaintiff averred that she was stopped due to a red traffic signal when defendants’ vehicle struck the rear of plaintiff’s 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 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, 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]). Defendants did not submit any affidavit in connection with this motion, and have not argue that the motion is premature.

Defendants assert 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 also challenged the admissibility of the police accident report. Even assuming the police accident report has no probative value, plaintiff’s unrefuted affidavit

was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Defendants also assert that the motion should be denied because plaintiff made a sudden stop causing the subject accident. First, defendants offer no evidence supporting a sudden stop argument. Second, 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]). Here, a sudden stop by plaintiff (if any), standing alone, would not provide defendants with a non-negligent explanation for the accident.

Furthermore, defendant’s argument that the motion should be denied because plaintiff failed to provide a “good faith affidavit” under 22 NYCRR 202.7 is without merit because the requirement is not applicable to a motion for summary judgment (*see Piemonte v JSF Realty, LLC*, 140 AD3d 1145 [2d Dept 2016]).

Thus, because plaintiff made a prima facie showing of entitlement to judgment as a matter of law, and defendants failed to raise a triable issue of fact as to their liability, plaintiff’s motion for summary judgment as against defendants is granted.

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

As to that aspect of plaintiff's motion seeking dismissal of defendants' affirmative defense alleging lack of personal jurisdiction, in the wake of plaintiff's prima facie showing that defendants were properly served (*see CPLR 308[2]*), defendants failed to raise a triable 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 the dismissal of defendants' first and third affirmative defenses is granted, and those defenses are dismissed; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **December 20, 2019.**

This constitutes the decision and order of the court.

Dated: November 7, 2019



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