

McKenzie v Beckford

2019 NY Slip Op 35123(U)

January 23, 2019

Supreme Court, Bronx County

Docket Number: Index No. 28923/2017E

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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PATRICK MCKENZIE,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28923/2017E

WARREN W BECKFORD and EDUARDO ALMONTE,

Defendants.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that occurred on June 10, 2017. At the time of the accident, plaintiff was a passenger in the vehicle operated by defendant Beckford when the vehicle operated by defendant Almonte collided with defendant Beckford’s vehicle, causing plaintiff’s injuries. Plaintiff seeks summary judgment on the issue of liability. Defendant Beckford cross-moves for summary judgment dismissing the complaint on the ground that he is not liable for the occurring accident. For the reasons that follow, plaintiff’s motion for summary judgment and defendant Beckford’s cross motion are denied.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). A motion for summary judgment should be supported by an affidavit from one with knowledge of the facts, a copy of the pleadings and other available proof (*see State v Metz*, 241 AD2d 192, 198 [1st Dept 1998]). When there is

conflicting evidence as to how the accident occurred, summary judgment is inappropriate (*see Elamin v Robert Express, Inc.*, 290 AD2d 291 [1st Dept 2002]). In deciding a summary judgment motion, the court should not weigh the parties' credibility (*see Krupp v Aetna Life & Casualty Co.*, 103 AD2d 252, 262 [2nd Dept 2002]). If there is any doubt as to existence of material issues of fact the motion should be denied (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

In support of the motion, plaintiff submits his affidavit, a copy of the pleadings and a police report. The police report is inadmissible hearsay (*see Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]). Plaintiff's affidavit is insufficient to satisfy his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of liability (*see CPLR 3212[b]; Coleman v Maclas*, 61 AD3d 569 [1st Dept 2009]). The material portion of plaintiff's affidavit is made upon information and belief – not on personal knowledge of the facts. Furthermore, plaintiff's affidavit is wholly conclusory as to defendants' alleged negligence (*see Coleman, supra*). The sufficiency of defendants' opposing papers is therefore immaterial (*see Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]).

On the cross motion, defendant Beckford submits a copy of the pleadings, a copy of plaintiff's affidavit and his affidavit. Defendant Beckford averred that, at the time of the accident, he was stopped at a red traffic light in the southbound lane on Jerome Avenue. At that time, the vehicle operated by defendant Almonte, which was traveling on the northbound lane, moved towards defendant Beckford lane of traffic and collided with the front left fender of defendant Beckford's vehicle.

In opposition, defendant Almonte averred that at the time of the accident he was travelling northbound on Jerome Avenue when the front left tire of his vehicle blew out.

Defendant Almonte also averred that once his tire blew out he immediately stopped his vehicle in his lane. Defendant Almonte further averred that, at that time, defendant Beckford's vehicle stopped next to his vehicle. Defendant Almonte averred that at no time did his vehicle come into contact with defendant Beckford's vehicle.

The conflicting versions as to how the accident occurred demonstrate the existence of issues of fact and credibility, making summary judgment in defendant Beckford's favor inappropriate (*see Peritore v Anna & Diane Cab Corp.*, 127 AD3d 669 [1st Dept 2014]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident is denied; and it is further

ORDERED, that defendant Beckford' cross-motion for summary judgment is denied.

This constitutes the decision and order of the court

Dated: January 23, 2019



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