

Barnes v McCullough

2019 NY Slip Op 35153(U)

January 17, 2019

Supreme Court, Bronx County

Docket Number: Index No. 27642/2018E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

-----X
BARNES, KAREEM

Index No. 27642/2018E

- against -

Hon. JOHN R. HIGGITT,

MCCULLOUGH, EMMANUEL, et ano.
-----X

A.J.S.C.

The following papers numbered 7 to 14 and 19 to 24 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on September 20, 2018 and duly submitted as No. 47 on the Motion Calendar of October 25, 2018.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	7-14
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	20-22
Replying Affidavit and Exhibits	23-24
Filed Papers	
Memoranda of Law	
Stipulations	19

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the subject motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: 01/17/ 2019

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance Settle Order
- Fiduciary Appointment Submit Order
- Referee Appointment

C

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

-----X
KAREEM BARNES,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 27642/2018E

EMMANUEL MCCULLOUGH and 54TH STREET
AUTO CENTER, INC.,

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 April 9, 2018. Plaintiff’s vehicle had been stopped when the defendants’ vehicle struck plaintiff’s vehicle in the rear. For the reasons that follow, plaintiff’s motion is granted.

“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 nonnegligent 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]). A rear-end collision constitutes a prima facie case of negligence against 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.*).

Plaintiff satisfied her prima facie burden, establishing her entitlement to judgment as a matter of law on the issue of defendants' liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings and her affidavit. Plaintiff averred that she had been double-parked for about two minutes with her hazard lights activated when defendants' vehicle struck the rear of her vehicle.

In opposition, defendants failed to raise a triable issue of fact as to their liability (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants submitted the affidavit of defendant McCullough in which he averred that at the time of the accident, the defendants' vehicle was stopped behind plaintiff's vehicle because of traffic. Defendant McCullough also averred that once traffic started moving, plaintiff's vehicle began to move and then, without warning, plaintiff's vehicle stopped for no reason.

Defendants failed to raise an issue of fact as to defendants' liability. 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]). The sudden stop of the lead vehicle, without more (*see Cabrera, supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]). Additionally, defendant McCullough's statement in the police report that he had taken his eyes off the road constitutes a party admission (*see Niyazov v Bradford*, 13

AD3d 501 [2nd Dept 2004]).

At mst, defendant McCullough's affidavit raises an issue of fact as to plaintiff's comparative fault, not defendants' liability. Because plaintiff established as a matter of law that defendants were negligent and that their negligence was a proximate cause of plaintiff's injuries, the existence of a triable issue of fact on the issue of plaintiff's comparative fault does not affect plaintiff's right to summary judgment on the issue of defendants' liability (*see Rodriguez v City of New York*, 31 NY3d 212 [2018]).


The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defense of plaintiff's comparative fault (*see CPLR 2214[a]*; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted.

This constitutes the decision and order of the court.

Dated: January 17, 2019



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