

Escalera v Hamilton

2019 NY Slip Op 35157(U)

November 29, 2019

Supreme Court, Bronx County

Docket Number: Index No. 23124/2018E

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: PART 14

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ESCALERA, MANUEL

Index No. 23124/2018E

- against -

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

HAMILTON, OMAR SEGARRA, et ano
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The following papers numbered 12 to 19 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on September 27, 2019 and duly submitted as No. 36 on the Motion Calendar of October 24, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	12-19
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, 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 is granted in part, in accordance with the annexed decision and order.

Dated: 11/29/2019

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

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

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

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

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MANUEL ESCALERA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 23124/2018E

OMAR SEGARRA HAMILTON and LILIANA
SEGARRA,

Defendants.

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John R. Higgitt, J.

Upon plaintiff’s August 27, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; there being no opposition to the motion; 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 is granted in part.

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 16, 2017. In support of his motion, plaintiff provided the pleadings and the transcripts of his deposition testimony. Plaintiff testified that he was stopped due to traffic ahead of him 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 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 (*see id.*).

Defendants failed to oppose plaintiff’s motion and thus failed to raise a triable issue of fact in opposition to plaintiff’s prima facie showing.

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 he 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 defendants’ second affirmative defense alleging plaintiff’s failure to wear a seatbelt, plaintiff testified at his deposition that at the time of the accident he was wearing a seatbelt, and defendants did not submit any evidence to rebut this statement.

As to that aspect of plaintiff’s motion seeking dismissal of defendants’ third 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.)

As to the aspect of plaintiff's motion seeking dismissal of defendants' fourth affirmative defense of collateral source off-set, plaintiff has not demonstrated that the defense is without merit. Thus, this aspect of plaintiff's motion is denied.

The aspects of plaintiff's motion seeking summary judgment on the issue of whether he sustained a "serious injury" and dismissal of defendants' fifth affirmative defense is denied because plaintiff has not provided evidence in admissible form demonstrating that he sustained a "serious injury" within the meaning of Insurance Law § 5102(d).

Accordingly, it is

ORDERED, that the aspect of plaintiff's motion seeking partial summary judgment on the issue of defendant's liability is granted; and it is further

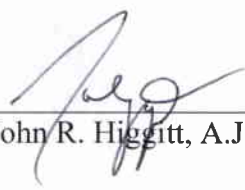
ORDERED, that the aspects of plaintiff's motion seeking the dismissal of defendant's first, second and third affirmative defenses are granted and that those defenses are dismissed; and it is further

ORDERED, that plaintiff's motion is otherwise denied.

The parties are reminded of the February 14, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 29, 2019



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