

Estrella v Urena

2019 NY Slip Op 35160(U)

January 29, 2019

Supreme Court, Bronx County

Docket Number: Index No. 24466/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

C

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

-----X
ESTRELLA, JOSE, et ano

Index No. 24466/2018E

- against -

Hon. JOHN R. HIGGITT,

URENA, JOSUE

A.J.S.C.


-----X
And a third party action.

The following papers numbered 12 to 27 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on October 9, 2018 and duly submitted as No. 47 on the Motion Calendar of November 11, 2018.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	12-22
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	25-26
Replying Affidavit and Exhibits	27
Filed Papers	
Memoranda of Law	
Stipulations	23-24

Upon the foregoing papers, plaintiffs’ motion for summary judgment on the issue of defendant’s liability for causing the subject motor vehicle accident and the dismissal of defendant’s counterclaim as against plaintiff Franklin Reyes is granted, in accordance with the annexed decision and order.

Dated: 01/29/2019

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
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

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

-----X
JOSE ESTRELLA and FRANKLIN REYES,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 24466/2018E

JOSUE URENA,

Defendant.

-----X
JOSUE URENA,

Third-Party Plaintiff,

- against -

L&N CAR SERVICE,

Third-Party Defendant.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs allegedly sustained in a motor vehicle accident that took place on September 3, 2017. Plaintiff Reyes was a passenger in plaintiff Estrella’s vehicle, which was coming to a stop when it was struck in the rear by defendant’s vehicle. Plaintiffs seek partial summary judgment on the issue of defendant’s liability for causing the subject accident and dismissal of defendant’s counterclaim as against plaintiff Reyes. For the reasons that follow, plaintiffs’ motion is granted.

A rear-end collision establishes 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.*).

Plaintiffs satisfied their prima facie burden of establishing their entitlement to judgment as a matter of law on the issue of defendant's liability (*see* CPLR 3212[b]). Plaintiffs submitted a copy of the pleadings and their affidavits. Plaintiffs averred that they were slowing down to a stop due to a police car stopped in their lane of traffic when defendant's vehicle struck the rear of plaintiffs' vehicle.

In opposition, defendant failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The affirmation of counsel alone is not sufficient to rebut plaintiffs' prima facie showing of entitlement to summary judgment (*see id.*). 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]).

Defendant argues that the motion should be denied because plaintiffs made a sudden stop, causing the accident. However, 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" (*see Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]). Notably, the accident occurred on a local roadway -- not a highway (*cf. Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]).

As to the aspect of plaintiffs' motion seeking the dismissal of defendant's counterclaim against plaintiff Reyes, the Court finds that plaintiff Reyes, an "innocent passenger" in plaintiff Estrella's vehicle, is entitled to summary judgment dismissing defendant's counterclaim (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]).

Accordingly, it is

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

ORDERED, that the aspect of plaintiffs' motion seeking the dismissal of defendant's counterclaim as against plaintiff Reyes is granted, and defendant's counterclaim is dismissed.

This constitutes the decision and order of the court.

Dated: January 29, 2019



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