

Wagstaffe v Weksler

2019 NY Slip Op 35164(U)

January 29, 2019

Supreme Court, Bronx County

Docket Number: Index No. 26784/2018E

Judge: John R. Higgitt

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

-----X
WAGSTAFFE, JEMAR, et ano.

Index No. 26784/2018E

- against -

Hon. JOHN R. HIGGITT,

WEKSLER, MICHAELA ALEXANDRA, et ano.

A.J.S.C.

-----X
The following papers numbered 6 to 11, 27 to 29 and 30 to 31 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY) (Motion Sequence #1), noticed on November 8, 2018 and duly submitted as No. 52 on the Motion Calendar of November 8, 2018 and the following papers numbered 15 to 21 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY) (Motion Sequence #2), noticed on November 8, 2018 and duly submitted as No. 54 on the Motion Calendar of November 8, 2018.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed (Motion Sequence #1)	6-11
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits (Motion Sequence #1)	27-29
Replying Affidavit and Exhibits (Motion Sequence #1)	30-31
Notice of Motion – Exhibits and Affidavits Annexed (Motion Sequence #2)	15-21

Upon the foregoing papers, plaintiff Thomas’ motion for partial summary judgment on the issue of defendants’ liability for causing the subject motor vehicle accident is granted (Motion Sequence #1), and plaintiff Wagstaffe’s motion for partial summary judgment on the issue of defendants’ liability is granted (Motion Sequence #2), 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

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
JEMAR WAGSTAFFE and SHAKIRA THOMAS,

Plaintiffs,

DECISION AND ORDER

- against -

Index No. 26784/2018E

MICHAELA ALEXANDRA WEKSLER and MILDRED
WEKSLER,

Defendants.
-----X

John R. Higgitt, J.

Plaintiffs’ respective motions for summary judgment (motion sequences #1 and #2) are consolidated for disposition herein, as they involve common questions of law and fact.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that occurred on February 1, 2018. Plaintiff Wagstaffe was a passenger in plaintiff Thomas’ vehicle when the vehicle operated by Michaela Alexandra Weksler (Michaela) and owned by defendant Mildred Weksler struck plaintiffs’ vehicle in the rear. Plaintiffs seek partial summary judgment on the issue of defendants’ liability for the subject accident. For the reasons that follow, plaintiffs’ motions for summary judgment are 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]). 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.*).

Plaintiffs satisfied their prima facie burdens, establishing their entitlement to judgment as a matter of law on the issue of defendants’ liability (*see CPLR 3212[b]*). Each plaintiff submitted a copy of the pleadings and an affidavit. Plaintiffs averred that they were driving southbound on Clearview Expressway when their vehicle came to a complete stop due to traffic. At that time, defendants’ vehicle rear ended plaintiffs’ vehicle, causing plaintiffs’ injuries.

In opposition, defendants argue that the motion should be denied because plaintiff Thomas made an abrupt stop without engaging her brake lights. Defendants submitted the affidavit of defendant Michaela in which she avers that she was driving behind plaintiff Thomas’ vehicle, which was travelling at 30 to 40 miles per hour. Defendant Michaela also averred that she observed plaintiffs’ vehicle come to an abrupt stop but did not observe the brake lights illuminate. Defendant Michaela further avers that before the accident her vehicle was more than a car length from the rear of plaintiffs’ vehicle. Defendant Michaela, however, offered no explanation for her failure to maintain a safe distance between her vehicle and plaintiffs’ vehicle (*see Profita v Diaz*, 100 AD3d 481 [1st Dept 2012]). Because defendant Michaela averred that she saw plaintiffs’ vehicle stop even though she did not observe the brake light illuminate, the failure of plaintiffs’ brake lights to illuminate does not constitute a non-negligent explanation

(see *Farrington v New York City Tr. Auth.*, 33 AD3d 332 [1st Dept 2006]).

Defendants failed to oppose plaintiff Wagstaffe's motion and, therefore, failed to raise a triable issue of material fact (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

The court notes that neither plaintiff sought (and the court has not considered) dismissal of defendants' affirmative defenses of plaintiffs' comparative fault (see CPLR 2214[a]; cf. *Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

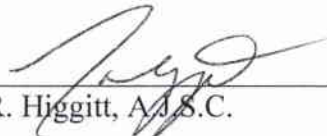
Accordingly, it is

ORDERED, that plaintiff Thomas' motion for partial summary judgment on the issue of defendants' liability is granted; (Motion Sequence # 1) and its further

ORDERED, that plaintiff Wagstaffe's motion for partial summary judgment on the issue of defendants' liability is granted. (Motion Sequence # 2)

This constitutes the decision and order of the court

Dated: January __, 2019



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