Garay v Florian
2019 NY Slip Op 35172(U)
October 9, 2019
Supreme Court, Bronx County
Docket Number: Index No. 30893/2018E
Judge: John R. Higgitt
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NEW YORK SUPREME COURT – COUNTY OF BRONX Mtn. Seq. # 03

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

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GARAY, LILLIAN

Index №. **30893/2018E**

- against -

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

FLORIAN, ANGEL, et ano

---X

The following papers numbered **20** to **28** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **August 23, 2019** and duly submitted as No. **24** on the Motion Calendar of **August 23, 2019**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	20-27
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	28
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 the subject accident and for dismissal of defendants' affirmative defenses is granted, in accordance with the annexed decision and order.

Dated: **10/09/2019**

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14
---X
LILLIAN GARAY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 30893/2018E

ANGEL FLORIAN and MARK FLORIAN,

Defendants.
---X

John R. Higgitt, J.

Upon plaintiff's July 23, 2019 notice of motion and the affirmation, and exhibit submitted in support thereof; defendants' August 16, 2019 affirmation in opposition; and due deliberation; plaintiff's motion for partial summary judgment[1] on the issue of defendants' liability for causing the subject accident and for dismissal of defendants' affirmative defenses alleging plaintiff's culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on October 22, 2017. In support of her motion, plaintiff submits the pleadings, the police accident report, and the transcripts of the parties' deposition testimony. Plaintiff testified that she was stopped due to a red traffic light when her vehicle was suddenly struck in the rear by defendants' vehicle. Defendant Mark Florian testified that he was stopped behind plaintiff's vehicle at the red traffic light; the light turned green and plaintiff's vehicle began to forward; and suddenly, without warning, plaintiff's vehicle came to a stop.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent explanation for the failure to maintain a safe distance . . . A driver is expected to drive at a

[1] The court notes that plaintiff's notice of motion mistakenly seeks relief related to the restoration of the case to the trial calendar; however, both the affirmation of plaintiff's counsel and defendants' opposition address summary judgment on the issue of liability. Thus, the court will treat this motion as one for summary judgment.

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 the 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.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law on the issue of defendants' liability, defendants failed to raise a triable issue of fact as to their liability. Defendant Mark Florian's testimony failed to provide a non-negligent explanation for the accident. Regardless of whether plaintiff's vehicle was stopped or moving at the moment of impact, defendant Mark Florian failed to maintain a reasonable distance between his vehicle and the vehicle directly in front of him, and offered no explanation for his failure to do so. "A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2nd Dept 2010]).

Furthermore, generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, 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 court notes too that the accident occurred on a local public roadway (*see Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019]).

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-Maroquin 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.

Accordingly, it is

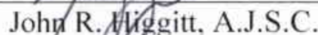
ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking the dismissal of defendants' first affirmative defense is granted and that defense is dismissed.

The parties are reminded of the October 21, 2019 pre-trial conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 9, 2019



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