

Bailey v Alicea

2019 NY Slip Op 35182(U)

October 10, 2019

Supreme Court, Bronx County

Docket Number: Index No. 29547/2018E

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

BAILEY, ODAIN

Index No. 29547/2018E

- against -

Hon. JOHN R. HIGGITT,

ALICEA, VICTOR, et ano

A.J.S.C.


-----X

The following papers numbered 10 to 22 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on August 26, 2019 and duly submitted as No. 53 on the Motion Calendar of August 26, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	10-19
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	20-21
Replying Affidavit and Exhibits	22
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for summary judgment on the issue of defendants’ liability for causing the subject accident, and dismissal of defendants’ affirmative defenses alleging plaintiff’s culpable conduct and plaintiff’s failure to wear a seat belt is granted, in accordance with the annexed decision and order.

Dated: 10/10/2019

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
ODAIN BAILEY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 29547/2018E

VICTOR ALICEA and LUIS ALICEA,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff’s July 15, 2019 notice of motion and the affirmation, and exhibit submitted therewith; defendants’ July 17, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff’s July 19, 2019 affirmation in reply; 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 alleging plaintiff’s culpable conduct and failure to wear a seat belt is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on August 5, 2017. In support of his motion, plaintiff submits the pleadings, the transcripts of the parties’ deposition testimony and his affidavit. Plaintiff testified that he was stopped on a local road to allow the vehicle in front of him to park when suddenly his vehicle was struck in the rear by defendants’ vehicle. In his affidavit, plaintiff averred, among other things, that he was wearing a seat belt at the time of the accident.

“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 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 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 their liability, defendants failed to raise a triable issue of fact. The affirmation of counsel alone is not sufficient to rebut plaintiff’s prima facie showing of entitlement to summary judgment. 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]).

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 the aspect of plaintiff’s motion seeking dismissal of defendants’ second affirmative defense alleging plaintiff’s failure to wear a seat belt, plaintiff made a prima facie showing that

he was wearing a seat belt at the time of the accident, and defendants failed to raise a triable issue of fact on this issue.

Accordingly, it is

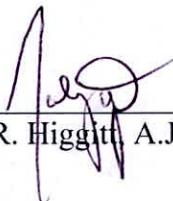
ORDERED, that the aspect of plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted; and it is further

ORDERED, that the aspects of plaintiff's motion seeking the dismissal of defendants' first and second affirmative defenses are granted, and those defenses are dismissed.

The parties are reminded of the November 15, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: October 10, 2019



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