

Phillips v American United Transp., Inc.

2019 NY Slip Op 35239(U)

January 7, 2019

Supreme Court, Bronx County

Docket Number: Index No. 30012/2017E

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



ROBERT PHILLIPS,

Index No.: 30012/2017E

-against-

Hon. JOHN R. HIGGITT,

AMERICAN UNITED TRANSPORTATION,
INC., et al.

A.J.S.C.

The following papers, numbered 9-16, 18-26 in the NYSCEF system, were read on this motion by defendant American United Transportation, Inc., seeking **SUMMARY JUDGMENT**.

Notice of Motion - Affirmation - Exhibits	Nos. 9-11
Affirmation in opposition - Exhibits	Nos. 12-15
Reply	No. 16
Notice of Cross Motion - Affirmation - Exhibits	Nos. 18-22
Affirmation in opposition - Exhibits	Nos. 23-25
Reply	No. 26

Defendant American United Transportation, Inc., seeks summary judgment on the issue of liability, and plaintiff cross-moves for summary judgment on the issues of liability and comparative fault. The motion and cross motion are granted.

The affidavit of the driver of defendant American United Transportation Inc.'s vehicle, Emerigildo Abreu, established that the vehicle was struck in the rear by defendant Cosme Plumbing and Heating Corp.'s vehicle, which was operated by Jose Abreu, while stopped in traffic. At the time of the hit-in-the-rear accident, plaintiff was a passenger in defendant American United Transportation Inc.'s vehicle. Emerigildo Abreu's affidavit established, prima facie, that defendant Cosme Plumbing and Heating Corp.'s vehicle followed defendant American United Transportation Inc.'s vehicle too closely in violation of Vehicle and Traffic Law § 1129. That violation triggered the presumption of liability against defendant Cosme Plumbing and Heating Corp. as the owner of the rear-most vehicle and the employer of the operator of that vehicle (*see Cabrera v Rodriguez*, 72 AD3d 553 [1st Dept 2010]).

In opposition, defendant Cosme Plumbing and Heating Corp. failed to raise a triable issue of fact as to its liability. Jose Abreu averred that defendant American United Transportation Inc.'s vehicle (operated by Emerigildo Abreu) stopped suddenly, causing the collision. However, the sudden stop of a lead vehicle, standing alone, is generally insufficient to raise a triable issue of fact as to whether the rear driver had a non-negligent explanation for the accident (*see id*). The court notes that the accident occurred on an exit ramp, not on a highway with normal traffic conditions (*cf. Beaz-Pena v MM Truck and Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]).

As to plaintiff's cross motion, the evidence in the motion record established that, as a matter of law, Jose Abreu, the employee of defendant Cosme Plumbing and Heating Corp., operated that defendant's vehicle in a negligent manner and that such negligence proximately caused plaintiff's injuries. Additionally, plaintiff, as an "innocent passenger," established that he was free of comparative fault for the accident (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]). Thus, plaintiff is entitled to summary judgment on the issue of liability against defendant Cosme Plumbing and Heating Corp., and summary judgment dismissing that defendant's affirmative defenses of plaintiff's comparative fault, the

Motion is Respectfully Referred to Justice:
Dated:

open and obvious doctrine, and the emergency doctrine.

Accordingly, it is hereby ordered that the motion of defendant American United Transportation, Inc., is granted, and the complaint as against it and all cross claims against it are dismissed; and it is further,

ORDERED that plaintiff's cross motion is granted, and plaintiff is entitled to summary judgment on the issue of liability against defendant Cosme Plumbing and Heating Corp., and summary judgment dismissing that defendant's fourth, sixth and ninth affirmative defenses; and it is further,

ORDERED that defendant Cosme Plumbing and Heating Corp.'s fourth, sixth and ninth affirmative defenses are dismissed.

This constitutes the decision and order of the court.

Bronx, NY

Dated: January 7, 2019

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

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- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER
 - FIDUCIARY APPOINTMENT REFEREE APPOINTMENT