

Jones v Nunez

2020 NY Slip Op 32857(U)

July 2, 2020

Supreme Court, Bronx County

Docket Number: 32618/2019E

Judge: John R. Higgitt

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

-----X
JEROME JONES,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 32618/2019E

ROBERT TORRES NUNEZ, JULIAN TORREZ, BETH
A. FIELDS and CHARLES A. FIELDS,

Defendants.
-----X

John R. Higgitt, J.

The parties' 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 that plaintiff allegedly sustained in a motor vehicle accident that took place on March 15, 2019. Defendants Beth A. Fields and Charles A. Fields ("the Fields defendants") seek summary judgment dismissing the complaint as against them and the cross claims against them on the ground that they are not liable for the accident (motion sequence no. 1). Plaintiff moves for partial summary judgment on the issue of the liability of defendants Nunez and Torrez ("the Nunez defendants") for causing the subject accident and for dismissal of the Nunez defendants' affirmative defense alleging plaintiff's culpable conduct (motion sequence no. 2). For the reasons that follow, the Fields defendants' motion and plaintiff's motion are granted.

The Field defendants seek summary judgment dismissing the complaint as against them and the cross claims against them on the ground that they are not liable for the accident. In support of their motion, the Field defendants submit the pleadings, the police accident report, and defendant Charles Fields' affidavit.

Defendant Charles Fields averred that, at the time of the accident, he was travelling behind plaintiff's vehicle when he brought his vehicle to a stop due to a red traffic signal. Defendant Charles Fields averred that as he was stopped behind plaintiff's vehicle his vehicle was struck in the rear by the Nunez defendants' vehicle. Defendant Charles Field averred that the impact to the rear of his vehicle was heavy, causing his vehicle to move forward and strike plaintiff's vehicle.

Plaintiff supports his motion with the pleadings, the police accident report and his affidavit. Plaintiff averred that at the time of the accident he was travelling on East 161 Street in Bronx County when he had to bring his vehicle to a stop due to a red traffic signal. Plaintiff averred that after he was stopped for approximately 30 seconds his vehicle was struck in the rear by the Field defendants' vehicle. Plaintiff averred that he subsequently learned that the Field defendants' vehicle was struck in the rear by the Nunez defendants' vehicle, causing the Field defendants' vehicle to strike plaintiff's vehicle.

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]). 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]), and a presumption of non-negligence of the driver of the lead vehicle (*see Soto-Marquin v Mellet*, 63 AD3d 449 [1st Dept 2009]).

The Field defendants made a prima facie showing that they are not liable for the accident as their vehicle was struck in the rear by the Nunez defendants' vehicle, and plaintiff made a

prima facie showing of entitlement to judgment as a matter of law on the issue of the Nunez defendants' liability.

In opposition to the moving parties' motions¹, the Nunez defendants failed to raise a triable issue of fact as to their liability for the subject accident or the Field defendants' liability for causing the subject accident.

The Nunez defendants assert that the motions are premature because depositions have not been completed. These motions, however, are not premature because "the information as to why the [the Nunez defendants' vehicle] struck the rear end of [the Field defendants' vehicle] reasonably rests within [the Nunez defendants' driver's] own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; see *Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary judgment (see *Castaneda, supra*; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]), and the non-moving parties offered nothing to suggest that additional discovery may yield information bearing on whether defendant Charles Field operated his vehicle in a negligent manner or that defendant Nunez had a non-negligent explanation for the accident. Notably, the Nunez defendants failed to submit an affidavit controverting the Field defendants' or plaintiff's respective versions of the accident.

As to the aspect of plaintiff's motion seeking dismissal of the Nunez defendants first affirmative defense alleging plaintiff's comparative fault, plaintiff made a prima facie showing

¹ Plaintiff does not oppose the Field defendants' motion (see NYSCEF doc. no. 37).

that he bears no such fault (*see Soto-Marroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]), and the Nunez defendants failed to raise a triable issue of fact.

Accordingly, it is

ORDERED, that the Field defendants' motion for summary judgment is granted, and the complaint as against them and the cross claims against them are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of the Field defendants dismissing the complaint as against them and the cross claims against them; and it is further

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

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

The parties are reminded that a compliance conference has been scheduled before the undersigned on November 13, 2020 at 9:30 a.m. in courtroom 407.

This constitutes the decision and order of the court.

Dated: July 2, 2020



John R. Higgitt, J.S.C.