Degiovanni v Christie
2020 NY Slip Op 32859(U)
July 8, 2020
Supreme Court, Bronx County
Docket Number: 33454/2019E
Judge: John R. Higgitt

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

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PATRIZIA DEGIOVANNI,

Plaintiff,

- against -

LUKE P. CHRISTIE and REGAL PEST MANAGEMENT, INC.,

Defendants.

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DECISION AND ORDER

Index No. 33454/2019E

John R. Higgitt, J.

Upon plaintiff's May 13, 2020 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' June 23, 2020 affirmation in opposition and the exhibits submitted therewith; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject accident is granted.

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 26, 2019. In support of her motion, plaintiff submits the pleadings, the certified police accident report, and her affidavit.

Plaintiff averred that she was stopped due to traffic on a local roadway (50 Boulevard in Pelham, New York) when defendants' vehicle struck the rear of her vehicle. Plaintiff further averred that she had brought her vehicle to a gradual stop because of stopped traffic ahead of her, and her vehicle had been stopped for approximately 10 seconds prior to the impact.

In opposition, defendant Christie averred that at the time of the accident he was traveling behind plaintiff's vehicle. Defendant Christie averred that before the vehicles approached the intersection with Corlies Avenue, which was controlled by a traffic control device, plaintiff's vehicle suddenly came to a stop in the middle of the roadway. Defendant Christie averred that there were no vehicles ahead of plaintiff's vehicle and that no obvious reason appeared for plaintiff's sudden stop.

"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 non-negligent 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.*).

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.

Defendants assert that the motion should be denied because there are questions of fact as to whether plaintiff made a sudden stop at the time of the accident. Defendant Christie's conclusory assertion that plaintiff made a sudden stop is insufficient to raise a triable issue of fact as to defendants' liability.

In any event, 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]). Furthermore, "[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 [2d Dept 2010]). The principle that a claim of a sudden stop by the rear-ended vehicle is insufficient to constitute a non-negligent explanation for a hit-in-the-rear accident has particular force when the accident occurs on a local public roadway (*see generally Animah v Agyei*, 63 Misc 3d 783 [Sup Ct, Bronx County 2019] [addressing local public roadways within the City of New York]). Thus, defendants' claim that plaintiff's vehicle made a sudden stop is insufficient to raise a triable issue of fact as to defendants' liability.

Other disputed issues of fact -- whether any vehicles were ahead of plaintiff's vehicle, the location of the accident -- are not material to the question of defendants' liability, for regardless of whether other vehicles were ahead of plaintiff's vehicle and regardless of where precisely the accident occurred, defendant Christie failed to maintain a reasonable safe distance between his vehicle and plaintiff's vehicle.

Defendants further assert that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the [defendants'] vehicle struck the rear end of plaintiff's car reasonably rests within defendant driver's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2007]; *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]).

In light of the general principles regarding hit-in-the-rear motor vehicle accidents, defendant Christie's statement raises, at most, an issue of fact as to plaintiff's comparative fault, not

defendants' liability. Because plaintiff established, as a matter of law, that defendants were negligent and that their negligence was a proximate cause of the accident, the existence of a triable issue of fact on the issue of plaintiff's comparative fault does not affect plaintiff's right to summary judgment on the issue of defendants' liability (*see Rodriguez v City of New York*, 31 NY3d 212 [2018]).

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendants' affirmative defense of plaintiff's comparative fault (*see* CPLR 2214[a]; *cf. Poon v Nisanov*, 162 AD3d 804 [2nd Dept 2018]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of the defendants' liability is granted.

The parties are reminded that a compliance conference has been scheduled before the undersigned on September 11, 2020 at 9:30 a.m. in courtroom 407.

This constitutes the decision and order of the court.

Dated: July 8, 2020

John R. Higgitt, J.S.C.