

Ortiz v Marte
2020 NY Slip Op 32860(U)
July 13, 2020
Supreme Court, Bronx County
Docket Number: 34684/2019E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

CARMEN ORTIZ,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 34684/2019E

BERNIES A. MERCEDES MARTE and BALDOR
EXPRESS TRANSPORTATION CO. LLC,

Defendants.

John R. Higgitt, J.

Upon plaintiff's February 13, 2020 notice of motion and the affirmation and exhibits submitted in support thereof; defendants' May 14, 2020 affirmation in opposition and the exhibits submitted therewith; defendants' May 14, 2020 notice of cross motion and the affirmation and exhibits submitted in support thereof; plaintiff's May 15, 2020 affirmation in opposition and the exhibits submitted therewith; plaintiff's May 18, 2020 affirmation in reply 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 and for dismissal of defendants' second, third, fourth, fifth, seventh, eighth, ninth, eleventh and twelfth affirmative defenses is denied, and defendants' cross motion to strike plaintiff's complaint for failure to comply with discovery is denied as moot.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on September 17, 2019. In support of her motion, plaintiff submitted the pleadings, the police accident report, and her affidavit.

Plaintiff averred that at the time of the accident she was a passenger in a non-party driver's vehicle, which was traveling on I-287 when it had to come to a slow and gradual stop

due to traffic. At that time defendants' vehicle struck the rear of the non-party driver's vehicle, which was at a complete stop.¹

Plaintiff also submits the police accident report containing defendant Marte's purported admission that "he was traveling northbound when [the vehicle plaintiff occupied] began to slow down and [he] didn't realize and collided into [the vehicle plaintiff occupied] (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

"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]). A rear-end collision constitutes 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]).

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

¹ Defendants assert that the motion should be denied because the translator's affidavit provided in connection with plaintiff's affidavit failed to disclose the translator's professional qualifications. However, an affidavit in a foreign language that has been translated into English does not require an itemized list of the translator's qualifications (*see National Puerto Rican Day Parade, Inc. v Casa Pubs., Inc.*, 79 AD3d 592, 594 [1st Dept 2010]), and the translator here provided sufficient information about her competence in both English and Spanish.

violation is clear when a driver follows another too closely without adequate reason and that conduct results in a collision (*see id.*).

Plaintiff made a prima facie showing that defendants violated Vehicle and Traffic Law § 1129 by failing to maintain a reasonable distance from other vehicles and that such violation was a proximate cause of the accident.

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, defendants argue that plaintiff's motion is premature because discovery is in its infancy and defendants' counsel "have not been able to meet with [defendant Marte] or visit the accident site due to the ongoing health crisis." With respect to the latter, defendants' counsel asserts that the public health crisis occasioned by the Coronavirus has prevented counsel from securing an affidavit from defendant Marte.

In light of the nascent stage of this litigation, the absence of meaningful discovery before motion practice, and (most importantly) the difficulty defendants' counsel encountered in obtaining an affidavit from defendant Marte as a result of the current public health crisis, the court agrees with defendants that plaintiff's motion is premature (*see CPLR 3212[f]*). Critically, this is not a situation where a defendant inexcusably failed to submit an affidavit in opposition to a summary judgment motion. Plaintiff may renew her summary judgment motion after the close of discovery.

Defendants' cross motion seeking to compel plaintiff to respond to defendants' demand for a bill of particulars and discovery demands is denied as moot because plaintiff has provided the bill of particulars and responded to discovery demands (*see* NYSCEF doc. no. 38, 41). Defendants are free to move anew for discovery-related relief should the need to so do arise.

Accordingly, it is

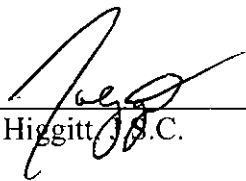
ORDERED, that plaintiff's motion is denied with leave to renew after the filing of the note of issue and certificate of readiness; and it is further

ORDERED, that defendants' cross motion is denied as moot; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **August 28, 2020**.

This constitutes the decision and order of the court.

Dated: July 13, 2020



John R. Higgitt, J.C.