Ventura v Peterson
2020 NY Slip Op 32871(U)
July 23, 2020
Supreme Court, Bronx County
Docket Number: 35412/2019E
Judge: John R. Higgitt

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

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MAYRA VENTURA and GERMAYRA RAMOS,

Plaintiffs,

- against -

VIRGINIA MARIE PETERSON, AS EXECUTOR OF THE ESTATE OF CHARLES V. PETERSON, DECEASED,

Defendant.

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DECISION AND ORDER

Index No. 35412/2019E

John R. Higgitt, J.

Upon plaintiffs' March 18, 2020 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendant's May 19, 2020 affirmation in opposition; plaintiffs' May 29, 2020 affirmation in reply and the exhibits submitted therewith; and due deliberation; plaintiffs' motion for partial summary judgment on the issue of decedent defendant Charles V. Peterson's liability for the subject accident and for dismissal of defendant's first, second and tenth affirmative defenses is granted in part.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that took place on December 12, 2011 at the intersection of Jerome Avenue and 233rd Street in Bronx County. In support of their motion, plaintiffs submit the pleadings, their affidavits, and the transcript of decedent defendant Charles V. Peterson's deposition testimony.

Plaintiff Ventura averred that at the time of the accident she was stopped at an intersection for a red traffic signal when her vehicle was struck in the rear by decedent defendant Charles V. Peterson's vehicle. Plaintiff Ramos averred that at the time of the accident she was a front-seated passenger in plaintiff Ventura's vehicle when that vehicle was struck in the rear.

Decedent defendant Charles V. Peterson testified that he was traveling behind plaintiffs' vehicle when plaintiffs came to a stop due to a red traffic signal, and decedent defendant Charles V. Peterson struck the rear of their vehicle.

"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 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]).

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, defendant failed to raise a triable issue of fact as to liability. 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]).

Defendant further asserts that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the defendant's 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 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016], and decedent defendant Charles V. Peterson submitted to a deposition before his death. 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]).

Because plaintiff made a prima facie showing of entitlement to judgment as a matter of law, and defendant failed to raise a triable issue of fact as to liability, the aspect of plaintiffs' motion for summary judgment on the issue of defendant's liability is granted.

As to the aspect of plaintiffs' motion seeking dismissal of defendant's first affirmative defense alleging plaintiffs' comparative fault, plaintiffs made a prima facie showing that they bear no such fault (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]), and defendant failed to raise a triable issue of fact.

As to defendant's affirmative defense alleging plaintiffs' failure to wear a seat belt, plaintiffs averred in their affidavits and testified at their depositions that, at the time of the accident, they were both wearing seat belts. Defendant does not provide any admissible evidence to rebut plaintiffs' account.

The aspect of plaintiffs' motion seeking dismissal of defendant's tenth affirmative

defense alleging plaintiffs' failure to state a cause of action is denied because plaintiffs have not demonstrated that they sustained "serious injuries" under Insurance Law § 5102(d). (Of course, plaintiffs were not required to do so to obtain summary judgment on the issue of defendant's liability.)

Accordingly, it is

ORDERED, that the aspect of plaintiffs' motion for summary judgment on the issue of defendant's liability for the subject accident is granted; and it is further

ORDERED, that the aspects of plaintiffs' motion seeking dismissal of defendant's first and second affirmative defenses are granted, and those defenses are dismissed; and it is further

ORDERED, that plaintiffs' motion is otherwise denied.

The parties are reminded that a compliance conference has been scheduled before the undersigned on September 4, 2020 at 9:30 a.m. in courtroom 407.

This constitutes the decision and order of the court.

Dated: July 23, 2020

John R. Higgitt, J.S.C.