

Duran v Hernandez

2020 NY Slip Op 35512(U)

April 28, 2020

Supreme Court, Bronx County

Docket Number: Index No. 23744/2019E

Judge: John R. Higgitt

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

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CAROLINE DURAN,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 23744/2019E

VICENTINA HERNANDEZ,

Defendant.
-----X

John R. Higgitt, J.

Upon plaintiff's January 17, 2020 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendant's February 5, 2020 affirmation in opposition; plaintiff's February 27, 2020 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and for dismissal of defendant's third affirmative defense alleging plaintiff's culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on September 24, 2017. In support of her motion, plaintiff submitted the pleadings, the police accident report, defendant's MV-104 police report, and a portion of plaintiff's deposition testimony. Plaintiff testified that she was a passenger in a non-party driver's vehicle, which was stopped in the left lane in the Bronx River Parkway, when defendant's vehicle struck the rear of the vehicle occupied by plaintiff.

"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 defendant’s liability, defendant failed to raise a triable issue of fact. 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 asserts that the motion should be denied because there are questions of fact as to how the accident occurred. Defendant relies on the statement purportedly made by her in the police accident report that the non-party driver’s vehicle made a sudden stop, causing defendant to rear end the non-party driver’s vehicle. Defendant’s unsworn exculpatory statement is hearsay and insufficient to raise a triable issue of fact (*see Rue v Stokes*, 191 AD2d 245 [1st Dept 1993]).

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]). Defendants’ conclusory, unsupported assertion that the non-party driver made a sudden stop is insufficient to raise a triable issue of fact as to defendant’s liability.

Defendant also asserts that the motion should be denied because there is a question of fact as to whether the vehicle occupied by plaintiff was stopped or moving at the time of the accident. Whether the vehicle plaintiff occupied was stopped or moving does not raise an issue of fact because “[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]).

As to the aspect of plaintiff’s motion seeking dismissal of defendant’s third affirmative defense alleging plaintiff’s culpable conduct and assumption of risk, under the circumstances, as the “innocent passenger” plaintiff is entitled to dismissal of defendant’s affirmative defense of comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 2016]). Additionally, the doctrine of primary assumption of risk does not apply to the facts of this matter (*see Custodi v Town of Amherst*, 20 NY3d 83 [2014]; *Valder v Weston*, 57 AD2d 862 [2nd Dept 1977]).


Accordingly, it is

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

ORDERED, that the aspect of plaintiff's motion seeking dismissal of defendant's third affirmative defense is granted, and that defense is dismissed.

This constitutes the decision and order of the court.

Dated: April 28, 2020



John R. Higgitt, J.S.C.