Deleon v Schulman
2020 NY Slip Op 35513(U)
January 31, 2020
Supreme Court, Bronx County
Docket Number: Index No. 25331/2019E
Judge: John R. Higgitt

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

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DELEON, ROSA E. Index №. **25331/2019E**

- against - Hon. **JOHN R. HIGGITT,**

SCHULMAN, ZACHARY D., et ano **J.S.C.**

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The following papers numbered **15** to **23** and **26** in the NYSCEF System were read on this motion for **SUMMARY JUDGEMENT (LIABILITY)**, noticed on **November 26, 2019** and duly submitted as No. **25** on the Motion Calendar of **December 30, 2019**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	15-23
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	26
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: **01/31/2020**

Hon. _____
JOHN R. HIGGITT, J.S.C.

Check one:	**Motion is:**	**Check if appropriate:**	
☐ Case Disposed in Entirety	■ Granted ☐ GIP	☐ Schedule Appearance	☐ Settle Order
■ Case Still Active	☐ Denied ☐ Other	☐ Fiduciary Appointment	☐ Submit Order
		☐ Referee Appointment	

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

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ROSA E. DELEON,

Plaintiff,

- against -

ZACHARY D. SCHULMAN and VALERIE COLLINS,

Defendants.

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DECISION AND ORDER

Index No. 25331/2019E

John R. Higgitt, J.

Upon plaintiff's November 6, 2019 notice of motion and the affirmation, affidavit, and exhibit submitted therewith; defendants' November 26, 2019 affirmation in opposition; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability for causing the subject motor vehicle accident is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on December 1, 2018. In support of her motion, plaintiff submits the pleadings, the police accident report, and her affidavit.

Plaintiff averred that at the time of the accident she was "slowing down for traffic that was stopped or slowing in front of [her]" when her vehicle was struck in the rear by defendants' vehicle. Plaintiff also submits the police accident report that contains the following party admission by defendant Schulman: that " he must have taken his eyes off the road and when he looked up he rear-ended [plaintiff's vehicle]" (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

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 [2nd 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 (*see id.*).

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law, defendants failed to raise a triable issue of fact as to their 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]).

Defendants argue that the motion should be denied because plaintiff failed to submit evidence in admissible form, relying solely on a "self-serving" affidavit. However, an affidavit submitted by an interested party is competent evidence and may be sufficient to discharge the interested party's summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]). Moreover, as noted above, the police report contains a party admission by defendant Schulman supporting summary judgment in plaintiff's favor. Notably, defendants did not address defendant Schulman's police-report admission in their opposition.

Defendants argue that the motion should be denied because there is an issue of fact as to how the accident occurred, specifically that the accident may have taken place because plaintiff made a sudden stop. Defendants offer no evidence supporting their sudden-stop defense. In any event, 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]). The sudden stop of the lead vehicle, without more (*see Cabrera*, *supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*see Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]). Defendants thus failed to rebut the presumption of their negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), and plaintiff's motion is granted.

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 [2d Dept 2018]).

Accordingly, it is

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

The parties are reminded of the May 22, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 31, 2020

John R. Higgitt, J.S.C.