

**Martinez v Eder**

2020 NY Slip Op 35527(U)

June 29, 2020

Supreme Court, Bronx County

Docket Number: Index No. 20746/2019E

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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INDIRA MARTINEZ, CESAR ARIAS, RUBEN BARET  
AND NELLY PEREZ,

DECISION AND ORDER

Plaintiffs,

Index No. 20746/2019E

- against -

LINDA EDER and JAKE RYAN WILDHORN,

Defendants.  
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John R. Higgitt, J.

Upon plaintiffs' February 24, 2020 notice of motion and the affirmation and exhibits submitted therewith; defendants' March 2, 2020 affirmation in opposition and the exhibit submitted therewith; plaintiffs' March 19, 2020 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability and for summary judgment dismissing defendants' counterclaim against plaintiff Martinez is granted.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that took place on April 27, 2018. In support of their motion, plaintiffs submit the pleadings, the police accident report, and the transcripts of the parties' deposition testimony.

Plaintiffs testified that at the time of the accident their vehicle was stopped for between 30 seconds and two minutes as they were waiting to merge onto the Henry Hudson Parkway when their vehicle was struck in the rear by defendants' vehicle. Plaintiffs also submit the police accident report that contains the following party admission by defendant Wildhorn: that "he was looking to merge onto the highway when he collided with [plaintiffs' vehicle]" (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

Defendant Wildhorn testified that he was traveling behind plaintiffs' vehicle when he looked onto the highway for a few seconds to check for traffic when suddenly his passenger warned him that

he was getting too close to plaintiffs' vehicle. Defendant Wildhorn was not able to stop and struck the rear of plaintiffs' 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 plaintiffs' 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.

Defendants assert that the motion should be denied because questions of fact exist regarding the period of time that plaintiffs' vehicle was stopped before the accident occurred. However, defendant Wildhorn had a responsibility to maintain a safe distance between his vehicle and plaintiffs' vehicle regardless of how long plaintiffs' vehicle was stopped (*see LaMasa, supra*), and he failed to do so. Thus, any question regarding the precise length of time plaintiffs' vehicle was stopped prior to the accident is not material.

Because plaintiffs made a prima facie showing of entitlement to judgment as a matter of law, and defendants failed to raise a triable issue of fact as to their liability, the aspect of plaintiffs' motion seeking summary judgment as against defendants on the issue of liability is granted.

As to the aspect of plaintiffs' motion seeking dismissal of defendants' counterclaim against plaintiff Martinez for contribution, plaintiffs made a prima facie showing that plaintiff Martinez bears no fault for the accident (*see Soto-Marroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]), and defendants failed to raise a triable issue of fact.

Accordingly, it is

ORDERED, that the aspect of plaintiffs' motion for partial summary judgment on the issue of defendants' liability is granted; and it is further

ORDERED, that the aspect of plaintiffs' motion seeking the dismissal of defendants' counterclaim against plaintiff Martinez is granted, and that counterclaim is dismissed; and it is further

This constitutes the decision and order of the court.

Dated: June 29, 2020

  
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John R. Higgin, J.S.C.