

Wilson v Ryan

2020 NY Slip Op 35663(U)

January 31, 2020

Supreme Court, Bronx County

Docket Number: Index No. 26397/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

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

-----X
WILSON, DANIEL

Index No. 26397/2018E

- against -

Hon. JOHN R. HIGGITT,

RYAN, MICHAEL J.
-----X

J.S.C.

The following papers numbered 10 to 13 and 16 to 19 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on November 13, 2019 and duly submitted as No. 28 on the Motion Calendar of December 27, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	10-13
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	16-18
Replying Affidavit and Exhibits	19
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the subject motor vehicle accident and for dismissal of defendant’s affirmative defense alleging plaintiff’s culpable conduct is denied, in accordance with the annexed decision and order.

Dated: 01/31/2020

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

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted GIP
- Denied Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

C

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

-----X
DANIEL WILSON,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26397/2018E

MICHAEL J. RYAN,

Defendant.
-----X

John R. Higgitt, J.

Upon plaintiff's October 22, 2019 notice of motion and the affirmation and exhibits submitted in support thereof; defendant's December 18, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's December 27, 2019 affirmation in reply and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject motor vehicle accident and for dismissal of defendant's affirmative defense alleging plaintiff's culpable conduct is denied.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that took place on January 6, 2018. In support of his motion plaintiff submits the pleadings and his affidavit. Plaintiff averred that at the time of the accident his vehicle was stopped in the parking lot of a strip mall as he waited for a parking space to become available when suddenly defendant's vehicle backed-up from a parking space and struck plaintiff's vehicle.

In opposition, defendant averred that "as [he] was exiting the parking lot [he] noticed plaintiff taking pictures of [defendant's] car. [Plaintiff] then jumped into his own car and drove away very fast." Defendant followed plaintiff and, upon catching up with him, inquired as to why plaintiff was taking pictures of defendant's vehicle. Plaintiff apparently did not respond. Defendant asserts that at no time was he involved in an accident with plaintiff's vehicle and that

he did not make contact with plaintiff's vehicle.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Summary judgment should be denied where there is any doubt as to the existence of a triable issue (*see Zuckerman, supra*). When there is conflicting evidence as to how an accident occurred, summary judgment is inappropriate (*see Elamin v Robert Express, Inc.*, 290 AD2d 291 [1st Dept 2002]). In deciding a summary judgment motion, the court should not weigh the parties' credibility (*see Krupp v Aetna Life & Casualty Co.*, 103 AD2d 252, 262 [2d Dept 2002]).

The conflicting versions as to how the accident occurred demonstrate the existence of issues of fact and credibility, making summary judgment in favor of plaintiff inappropriate (*see Peritore v Anna & Diane Cab Corp.*, 127 AD3d 669 [1st Dept 2014]). Notably, defendant's account of the events is not incredible as a matter of law (*cf. Moorhouse v Standard, N.Y.*, 124 AD3d 1 [1st Dept 2014]).

The court notes that plaintiff could not remedy basic deficiencies in his prima facie showing in reply, and that, in any event, the photographs submitted by plaintiff in reply do not resolve the issue of defendant's liability as a matter of law.

Accordingly, it is

ORDERED, that plaintiff's motion for summary judgment is denied.

The parties are reminded of the May 15, 2020 compliance conference before the

undersigned.

This constitutes the decision and order of the court.

Dated: January 31, 2020



John R. Higgins, J.S.C.