

Lendof v Fernandez

2020 NY Slip Op 35674(U)

January 23, 2020

Supreme Court, Bronx County

Docket Number: Index No. 28215/2018E

Judge: John R. Higgitt

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This opinion is uncorrected and not selected for official publication.

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



-----X
LENDOF, ELENA

Index No. 28215/2018E

- against -

Hon. JOHN R. HIGGITT,

FERNANDEZ, ELIAS, et ano.

J.S.C.

-----X
The following papers numbered 49 to 53, in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on October 24, 2019 and duly submitted as No. 37 on the Motion Calendar of December 02, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	49-53
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	
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 defendant Fernandez’s liability for causing the subject accident is granted, in accordance with the annexed decision and order.

Dated: 01/23/2020

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

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

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

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

-----X
ELENA LENDOF,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28215/2018E

ELIAS FERNANDEZ and KRISTOPHER RAMON
HADDOCK,

Defendants.
-----X

John R. Higgitt, J.

Upon plaintiff’s October 8, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; there being no opposition to the motion; and due deliberation; plaintiff’s motion for partial summary judgment on the issue of defendant Fernandez’s liability for causing the subject accident is granted.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that occurred on February 21, 2018. In support of the motion, plaintiff submits a copy of the pleadings, the police accident report, defendant Fernandez’s deposition testimony, and her affidavit. Plaintiff averred she was a passenger in defendant Fernandez’s vehicle when that vehicle struck the rear of defendant Haddock’s vehicle, which was stopped due to a red traffic light.

Defendant Fernandez testified that at the time of the accident he was stopped behind defendant Haddock’s vehicle; that Fernandez took his foot off the brakes and his vehicle rolled forward; and that his vehicle struck the rear of defendant Haddock’s vehicle.

“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 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 constitutes 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.*).

Defendant Fernandez did not oppose plaintiff’s motion and thus failed to raise a triable issue of fact in opposition to plaintiff’s prima facie showing.

Under the circumstances, the “innocent passenger” plaintiff is entitled to dismissal of defendant Fernandez’s second affirmative defense alleging plaintiff’s comparative fault (*see Oluwatayo v Dulinayan*, 142 AD3d 113 [1st Dept 1999]).

Accordingly, it is

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

ORDERED, that the defendant Fernandez’s second affirmative defense alleging plaintiff’s comparative fault is dismissed.

The parties are reminded of the February 24, 2020 pre-trial conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 23, 2020



John R. Higitt, J.S.C.