Rivera v Sachdeva
2019 NY Slip Op 34876(U)
November 7, 2019
Supreme Court, Bronx County
Docket Number: Index No. 32905/2018E
Judge: John R. Higgitt

NEW YORK SUPREME COURT – COUNTY OF BRONX Mtn. Seq. # 01

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

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FLORES RIVERA, CINUE, et ano

Index №. **32905/2018E**

- against -

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

SACHDEVA, RAJAN

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The following papers numbered **16** to **25** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **October 2, 2019** and duly submitted as No. **29** on the Motion Calendar of **October 2, 2019**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	16-23
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	24
Replying Affidavit and Exhibits	25
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiffs' motion for summary judgment on the issue of defendant's liability for causing the subject accident and dismissal of defendant's first affirmative defense alleging plaintiff Rivera's culpable conduct is granted, in accordance with the annexed decision and order.

Dated: **11/07/2019**

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

Check one:
□ Case Disposed in Entirety
■ Case Still Active

Motion is:
■ Granted □ GIP
□ Denied □ Other

Check if appropriate:
□ Schedule Appearance □ Settle Order
□ 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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CINUE FLORES RIVERA and RUBI VASQUEZ,

Plaintiffs,

- against -

RAJAN SACHDEVA,

Defendant.

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DECISION AND ORDER

Index No. 32905/2018E

John R. Higgitt, J.

Upon plaintiffs' September 11, 2019 notice of motion and the affirmation, and exhibit submitted in support thereof; defendant's September 11, 2019 affirmation in opposition; plaintiffs' September 25, 2019 affirmation in reply; and due deliberation; plaintiffs' motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and for dismissal of defendant's first affirmative defense alleging plaintiff Rivera's culpable conduct is granted.

This is a negligence action to recover damages for personal injuries plaintiffs sustained in a motor vehicle accident that took place on August 25, 2018. In support of their motion, plaintiffs submit the pleadings, the police accident report, and the transcripts of the parties' deposition testimony. Plaintiff Rivera testified that he was stopped due to traffic when his vehicle was suddenly struck by defendant's vehicle.

Defendant testified that he was traveling in the left lane on the Bronx River Parkway when he started looking to his right where an accident had occurred. Once he looked forward to his direction of travel, he noticed that plaintiffs' vehicle was stopped, but, he was unable to stop in time to avoid the accident.

The police accident report also contains the following party admission by defendant: "he was distracted by an uninvolved accident, not noticing that the traffic in front of him had stopped, he rear-ended [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 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]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping the 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 (*see id.*).

In opposition to plaintiffs' 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. Defendant asserts that at the time of the accident plaintiffs' vehicle made a sudden stop causing the accident.

However, defendant offers no evidence supporting his sudden-stop argument. 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]). Additionally, "[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]). Given that defendant admitted at his deposition to being distracted and not noticing that plaintiffs' vehicle had stopped before the collision, and that defendant provided no affidavit explaining why he did not keep a reasonably safe distance from plaintiffs' vehicle, defendant's sudden stop argument is without merit.

As to the aspect of plaintiffs' motion seeking dismissal of defendant's first affirmative defense alleging plaintiff Rivera's comparative fault, plaintiff Rivera made a prima facie showing that he bears no such fault (*see Soto-Maroquin v Mellet*, 63 AD3d 449 [1st Dept 2009]). Because defendant failed to raise a triable issue of fact, the aspect of plaintiffs' motion seeking dismissal of defendant's first affirmative defense alleging plaintiff Rivera's comparative fault is granted.

Accordingly, it is

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

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

The parties are reminded of the November 22, 2019 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 7, 2019

John R. Higgitt, A.J.S.C.