Eusebio v Ahern Rentals Inc.

2019 NY Slip Op 35045(U)

November 21, 2019

Supreme Court, Bronx County

Docket Number: Index No. 23982/2019E

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: I.A.S. PART 14
---X
RAFAEL EUSEBIO,

Plaintiff,

- against -

AHERN RENTALS INC. and JUAN URREGO

Defendants.
---X

DECISION AND ORDER

Index No. 23982/2019E

John R. Higgitt, J.

Upon plaintiff's July 29, 2019 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendants' October 11, 2019 affirmation in opposition; plaintiff's October 15, 2019 affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability 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 21, 2018. In support of his motion, plaintiff submits the pleadings, the uncertified police accident report, and his affidavit. Plaintiff averred that at the time of the accident his vehicle was stopped due to a red traffic signal when his vehicle was struck in the rear by defendants' 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 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 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 assert 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]). Defendants also challenged the admissibility of the police accident report. Even if the accident report was not in admissible form, and plaintiff overstated its import, plaintiff's unrefuted affidavit was sufficient to meet his prima facie burden (*see Santana v Danco Inc.*, 115 AD3d 560 [1st Dept 2014]).

Defendants further assert that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the [defendants'] vehicle struck the rear end of plaintiff's car reasonably rests within defendant driver's own knowledge" (*Rodriguez v Garcia*, 154 AD3d 581, 581 [1st Dept 2017]; *see Castaneda v DO & CO New York Catering, Inc.*, 144 AD3d 407 [1st Dept 2016]). The mere hope that a party might be able to uncover some evidence during the discovery process is insufficient to deny summary

judgment (*see Castaneda*, *supra*; *Avant v Cepin Livery Corp.*, 74 AD3d 533 [1st Dept 2010]; *Planned Bldg. Servs., Inc. v S.L. Green Realty Corp.*, 300 AD2d 89 [1st Dept 2002]). Notably, defendants did not provide an affidavit in connection with this motion, or explain their failure to do so.

Thus, because plaintiff 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, plaintiff's motion for partial summary judgment on the issue of defendants' liability 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 [2nd Dept 2018]).

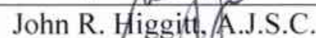
Accordingly, it is

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

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **January 10, 2020**.

This constitutes the decision and order of the court.

Dated: November 21, 2019



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