

Black v Spanos

2019 NY Slip Op 35068(U)

November 19, 2019

Supreme Court, Bronx County

Docket Number: Index No. 28665/2019E

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

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DONNETTE BLACK,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28665/2019E

JOHN SPANOS,

Defendant.

-----X
John R. Higgitt, J.

Upon plaintiff's August 27, 2019 notice of motion and the affirmation, affidavits and exhibits submitted in support thereof; defendant's September 5, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's affirmation in reply; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject accident and dismissal of defendant's affirmative defense alleging plaintiff's comparative fault is denied.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on September 25, 2018. In support of her motion, plaintiff submitted the pleadings, the police accident report, her affidavit and the affidavit of non-party witness Lee S. Wolosky.

Plaintiff averred that at the time of the accident she was driving on Coswold Road in Westchester County with Mr. Wolosky as a passenger when she had to come to a stop due to a red traffic signal. After the signal turned green, plaintiff proceeded to cross the intersection when defendant's vehicle, which was travelling on Old Army Road, allegedly failed to stop at the red traffic signal controlling his direction of travel and struck the rear side of plaintiff's vehicle. Non-party witness Mr. Wolosky's affidavit corroborated plaintiff's narrative of the accident.

Defendant opposed the motion, relying on his affidavit in which he averred that at the

time of the accident he was travelling on Old Army Road with a green traffic light in his favor. Defendant averred that before entering the intersection he looked both ways to make sure that there were no approaching vehicles, then proceeded into the intersection. At that time, plaintiff's vehicle entered the intersection, causing the subject accident.

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 denies making the particular statement attributed to him in the police report (and, by extension, denies making the similar inculpatory statement Mr. Wolosky asserts that defendant made). "The credibility of the defendant's assertion that he did not make the statement attributed to him [in the police report] is for a jury to determine; it is not incredible as a matter of law" (*Imamkhodjaev v Kartvelishvili*, 44 AD3d 619 [2d Dept 2007]).

Accordingly, it is

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

The parties are reminded of the March 6, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 19, 2019



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