Saleh v Rivera
2020 NY Slip Op 35548(U)
January 31, 2020
Supreme Court, Bronx County
Docket Number: Index No. 25825/2019E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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NADA SALEH,

Plaintiff,

- against -

JONATHAN J. RIVERA,

Defendant.

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DECISION AND ORDER

Index No. 25825/2019E

John R. Higgitt, J.

Upon plaintiff's November 13, 2019 notice of motion and the affirmation, affidavit, exhibit and memorandum of law submitted therewith; defendant's December 2, 2019 affirmation in opposition; plaintiff's December 4, 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 accident and dismissal of defendant's affirmative defense alleging plaintiff's culpable conduct is granted in part.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on July 11, 2017. In support of her motion, plaintiff submits the pleadings, the police accident report, and her affidavit.

Plaintiff averred that at the time of the accident she was driving at a low speed when her vehicle was struck in the rear by defendant's vehicle. Plaintiff also submits the police accident report that contains the following party admission by defendant: he " looked away for about 1 second and all of the sudden he hit [plaintiff's vehicle]" (*see Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588 [1st Dept 2019]; *Niyazov v Bradford*, 13 AD3d 501 [2d Dept 2004]).

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, defendant failed to raise a triable issue of fact as to his 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]).

Defendant argues 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]). Moreover, as noted above, the police report contains a party admission by defendant supporting summary judgment in plaintiff's favor. Notably, defendant did not address his police-report admission in his opposition.

Defendant further asserts that the motion is premature because depositions have not been completed. This motion, however, is not premature because "the information as to why the defendant's 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]). Defendant did not provide an affidavit in connection with this motion, and no reason was given for his failure to do so.

Because plaintiff made a prima facie showing of entitlement to judgment as a matter of law, and defendant failed to raise a triable issue of fact as to his liability, the aspect of plaintiff's motion for summary judgment as against defendant is granted.

As to the aspect of plaintiff's motion seeking dismissal of defendant's first affirmative defense alleging plaintiff's comparative fault, the court cannot say on this pre-deposition motion record that plaintiff is free of comparative fault as a matter of law. Plaintiff's brief affidavit does not eliminate all issues of fact regarding her potential comparative fault. Plaintiff may renew her motion to dismiss defendant's comparative-fault affirmative defense after the filing of the note of issue and certificate of readiness.

Accordingly, it is

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

ORDERED, that the aspect of plaintiff's motion for seeking dismissal of defendant's first affirmative defense is denied with leave to renew upon the filing of the note of issue and certificate of readiness.

The parties are reminded of the February 28, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: January 31, 2020

John R. Higgitt, J.S.C.