

Raposo v Yoshovayev

2018 NY Slip Op 34513(U)

December 17, 2018

Supreme Court, Bronx County

Docket Number: Index No. 20565/2018E

Judge: John R. Higgitt

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

-----X
RAPOSO, MILANGEL

Index No. 20565/2018E

- against -

Hon. JOHN R. HIGGITT,

YOSHOVAYEN, ANOTOLI
-----X

A.J.S.C.

The following papers numbered 6 to 17 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on June 14, 2018 and duly submitted as No. 51 on the Motion Calendar of September 24, 2018.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	6-11
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	12-13
Replying Affidavit and Exhibits	14-17
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendant’s liability for causing the subject motor vehicle accident is granted, in accordance with the annexed decision and order.

Dated: 12/17/2018

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

-----X
MILANGEL RAPOSO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 20565/2018E

ANATOLI YOSHOVAYEV,

Defendant.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that occurred on August 10, 2016. At the time of the accident, plaintiff was a passenger in a vehicle that was rear-ended by defendant. Plaintiff seeks summary judgment on the issue of liability. For the reasons that follow, plaintiff’s motion for summary judgment is granted.

“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 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.*).

Plaintiff satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings and his affidavit. Plaintiff avers that he was a backseat passenger in the vehicle of non-party driver Jesse Andujar. Plaintiff further avers that while the Andujar vehicle was stopped due to heavy traffic the vehicle operated by defendant struck the back of the Andujar vehicle.

In opposition, defendant failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendant argued 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]).

Defendant also argued that the motion is premature because no discovery has been conducted. However, plaintiff’s motion is not premature because “the information as to why the defendants’ vehicle struck the rear end of [the Andujar Vehicle] 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*).

Lastly, defendant’s argument that the motion should be denied because plaintiff failed submit the bill of particulars in support of his motion is without merit. A bill of particulars is not

a pleading, but a device designed to amplify or supplement a pleading (*see Northway Engineering, Inc. v Felix Industries, Inc.*, 77 NY2d 332, 335 [1991]). Therefore, the omission of a bill of particulars from a summary judgment motion does not violate CPLR 3212(b). Because defendant failed to rebut the presumption of his negligence (*see Dattilo v Best Transp. Inc.*, 79 AD3d 432 [1st Dept 2010]), the motion is granted.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendant's affirmative defense of 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 defendant's liability is granted

This constitutes the decision and order of the court.

Dated: December 17, 2018



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