Sillim v Thomas
2018 NY Slip Op 34514(U)
December 17, 2018
Supreme Court, Bronx County
Docket Number: Index No. 21689/2018E
Judge: John R. Higgitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: **PART 14**

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SILLIM, DAVID Index №. **21689/2018E**

- against - Hon. **JOHN R. HIGGITT**,

THOMAS, JASON, et ano. A.J.S.C.

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The following papers numbered **8** to **17** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **June 20, 2018** and duly submitted as No. **56** on the Motion Calendar of **September 24, 2018.**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	8-14
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	15-16
Replying Affidavit and Exhibits	17
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issue of defendants' 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

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DAVID SILLIM,

Plaintiff,

- against -

JASON THOMAS and ANASIA DAVIS,

Defendants.

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DECISION AND ORDER

Index No. 21689/2018E

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident that took place on July 21, 2017. The vehicle operated by plaintiff had been stopped due to traffic on the Bronx River Parkway when the accident occurred. At the time, the vehicle operated by defendant Thomas and owned by defendant Davis struck plaintiff's vehicle in the rear. Plaintiff seeks partial summary judgment on the issue of defendants' liability. For the reasons that follow, plaintiffs' motion 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.*).

Here, plaintiff satisfied his prima facie burden of establishing his entitlement to judgment as a matter of law on the issue of defendants' liability (*see* CPLR 3212[b]). Plaintiff submitted a copy of the pleadings and an affidavit. Plaintiff's affidavit set forth sufficient details as to how the accident occurred, namely that plaintiff's vehicle was stopped due to traffic when defendants' vehicle struck the rear of plaintiff's vehicle, causing plaintiff's injuries.

In opposition, defendants failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants' argued that the motion is premature because discovery has 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 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*; *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]). Because defendants failed to rebut the presumption of their 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

defendants' 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 defendants' liability for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: December 17, 2018

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