Sanchez v Simpson
2018 NY Slip Op 34516(U)
November 7, 2018
Supreme Court, Bronx County
Docket Number: Index No.: 24774/2018E
Judge: John R. Higgitt
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NEW YORK SUPREME COURT – COUNTY OF BRONX Mtn. Seq. # 01

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

---X

SANCHEZ, VICTORIA Index №. **24774/2018E**

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

SIMPSON, ARIELLA D., et al A.J.S.C.

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The following papers numbered **8** to **16** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)** noticed on **July 18, 2018** and duly submitted as No._on the Motion Calendar of **September 7, 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
Replying Affidavit and Exhibits	16
Stipulations	

Upon the foregoing papers, plaintiff's motion for partial summary judgment on the issues of defendants' liability for causing the subject motor vehicle accident and plaintiff's freedom from comparative fault is granted, in accordance with the annexed decision and order.

Dated: **11/7/2018**

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
☐ Fiduciary Appointment
☐ Referee Appointment
☐ Settle Order
☐ Submit Order

[*1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14
--X
VICTORIA SANCHEZ,

Plaintiff,

- against -

ARIELLA D. SIMPSON, JOSEPH D. SIMPSON and JUDITH SIMPSON,

Defendants.
--X

DECISION AND ORDER

Index No. 24774/2018E

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff sustained in a motor vehicle accident. Plaintiff had been stopped at the stop sign on the West 230th Street on-ramp of the Major Deegan Expressway. At that time, a vehicle operated defendant Ariella D. Simpson and owned by defendants Joseph D. Simpsons and Judith Simpson struck plaintiff's vehicle in the rear. Plaintiff seeks partial summary judgment on the issues of defendants' liability and her freedom from comparative fault. For the reasons that follow, plaintiff's 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]). The happening of a rear-end collision is itself a prima facie case of negligence of 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 her prima facie burden of establishing her 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 her affidavit. Plaintiff's affidavit sets forth sufficient details as to how the accident occurred, namely that plaintiff's vehicle was stopped at a stop sign when defendants' vehicle impacted the rear end of plaintiff's vehicle without warning, causing the plaintiff's injuries. Plaintiff's evidence set forth sufficient detail as to how the accident occurred, satisfying the prima facie burden for summary judgment. Moreover, plaintiff's evidence established her freedom from comparative fault.

In opposition, defendants failed to raise a triable issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The affirmation of counsel alone is not sufficient to rebut plaintiff's prima facie showing of entitlement to summary judgment (*see id.*). 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 argue that the motion is premature because no discovery has taken place. However, plaintiff's motion is not considered premature when the information as to why the accident occurred reasonably rests within defendants' own knowledge and could be asserted their own sworn attestations (*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]).

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 and plaintiff's freedom from comparative fault is granted; and it is further

ORDERED, that defendants' second affirmative defense alleging plaintiff's culpable conduct is dismissed.

This constitutes the decision and order of the court.

Dated: November 7, 2018

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

[*4]