

Dwamena v Grullon-Rosario

2018 NY Slip Op 34518(U)

December 6, 2018

Supreme Court, Bronx County

Docket Number: Index No.: 28476/2017E

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: PART 14

-----X
DWAMENA, NANA

Index No. 28476/2017E

- against -

Hon. JOHN R. HIGGITT,

GRULLON-ROSARIO, CESAR, et ano.
-----X

A.J.S.C.

The following papers numbered 22 to 26 and 30 to 34 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on August 14, 2018 and duly submitted as No. 52 on the Motion Calendar of September 14, 2018.

| | NYSCEF Doc. Nos. |
|--|------------------|
| Notice of Motion – Exhibits and Affidavits Annexed | 22-26 |
| Notice of Cross-Motion – Exhibits and Affidavits Annexed | |
| Answering Affidavit and Exhibits | 31-33 |
| Replying Affidavit and Exhibits | 34 |
| Filed Papers | |
| Memoranda of Law | |
| Stipulations | 30 |

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: 12/6/2018

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
NANA DWAMENA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 28476/2017E

CESAR GRULLON-ROSARIO and FRANCISCO
GRULLON-ROSARIO,

Defendants.

-----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 June 14, 2016. Plaintiff seeks partial summary judgment on the issue of defendants' liability. 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 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 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, a copy of the police report and her affidavit. In her affidavit plaintiff avers that she was driving slowing on Park Avenue due to heavy traffic when she was suddenly struck in the rear by defendants' vehicle. The police report contains an admission by defendant Cesar Grullon-Rosario, the operator of defendants' vehicle: he struck plaintiff's vehicle in the rear (*see Niyazov v Bradford*, 13 AD3d 501 [2nd Dept 2004]).

In opposition, defendant driver submitted an affidavit in which he averred that plaintiff's vehicle was not proceeding slowly in traffic but was instead double-parked. Specifically, defendant driver averred that when he realized that plaintiff's vehicle was double parked he "attempted to move to the left to go around [plaintiff's] vehicle when there was a contact between [the] vehicle." In light of the facts on this motion record, defendants' argument goes to plaintiff comparative fault in causing the accident. As the Court of Appeals has made plain, a plaintiff is not required to demonstrate his or her freedom from comparative fault to obtain summary judgment on the issue of liability (*Rodriguez v City of New York*, 31 NY3d 312 [2018]).

Defendants further argue that plaintiff's motion should be denied as premature because no discovery has been conducted. However, plaintiff's motion cannot be considered premature when "the information as to why [the defendants' 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]). Because defendants have 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 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 defendants' liability for causing the subject motor vehicle accident is granted.

This constitutes the decision and order of the court.

Dated: December 6, 2018



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