

Brito v Parmar

2018 NY Slip Op 34521(U)

October 24, 2018

Supreme Court, Bronx County

Docket Number: Index No. 25054/2018E

Judge: John R. Higgitt

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

-----X
BRITO, LEOMARVIN

Index No. **25054/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

PARMAR, PARVINDER
-----X

A.J.S.C.

The following papers numbered 6 to 17 and 19 to 24 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **August 31, 2018** and duly submitted as No. **37** on the Motion Calendar of **August 31, 2018**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	6-17
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	19-21
Replying Affidavit and Exhibits	22-24
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: 10/24/2018

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

C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

-----X
LEOMARVIN BRITO,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 25054/2018E

PARVINDER PARMAR,

Defendant.
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident. Plaintiff was riding his bicycle on West 107th Street when defendant Parmar struck plaintiff's bicycle in the rear. Plaintiff seeks summary judgment on the issue of liability. For the reasons that follow, plaintiff's motion is granted.

Under Vehicle and Traffic Law § 1231, a person riding a bicycle on the roadway should be granted all the rights and be subject to all duties applicable to the drivers of motor vehicles (*see Aiello v City of New York*, 32 AD3d 361, 362 [1st Dept 2006]). As such, Vehicle and Traffic Law § 1129(a) applies to a bicyclist riding the bike on a road (*see Martinez v Martinez*, 93 AD3d 767, 768 [2nd Dept 2012]; *Wollruch v Jaekel*, 2012 NY Misc. LEXIS 1408 [Sup Ct. New York County 2012]).

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, a verified bill of particulars and an affidavit of merit. Plaintiff's affidavit of merit sets forth sufficient detail as to how the accident occurred, namely that plaintiff was travelling on West 107th Street, without warning, when defendant's vehicle impacted the rear end of plaintiff's bicycle causing the plaintiff's injuries.

In opposition, defendant 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. 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 is premature because no discovery has taken place. However, plaintiff's motion cannot be premature when the information as to why the accident occurred reasonably rests within defendant's own knowledge and could be asserted by his own sworn attestations (*see 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]).

Defendant further argues that the motion should be denied because plaintiff failed to demonstrate plaintiff's lack of comparative negligence. However, the Court of Appeals held "that to obtain partial summary judgment on defendants' liability he [or she] does not have to demonstrate the absence of his [or her] own comparative fault" (*Rodriguez v City of New York*, 31 NY3d 212, 223 [2018]).

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]).

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendant's liability for causing the subject accident is granted.

This constitutes the decision and order of the court.

Dated: October 24, 2018



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