

**Collins v Singh**

2018 NY Slip Op 34523(U)

December 21, 2018

Supreme Court, Bronx County

Docket Number: Index No. 26564/2018E

Judge: John R. Higgitt

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

-----X  
**COLLINS, WILBERT C.**

Index No. **26564/2018E**

- against -

Hon. **JOHN R. HIGGITT,**

**SINGH, NAVJIT, et al**

A.J.S.C.

-----X

The following papers numbered **9** to **16** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (DEFENDANT)**, noticed on **September 26, 2018** and duly submitted as No. **31** on the Motion Calendar of **September 26, 2018**.

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Exhibits and Affidavits Annexed	9-14
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	15
Replying Affidavit and Exhibits	16
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, defendant Cabrera-Polanco’s motion for summary judgment is granted, in accordance with the annexed decision and order.

Dated: **12/21/2018**

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  
WILBERT C. COLLINS,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 26564/2018E

NAVJIT SINGH, NYC LINE CONTRACTORS INC. and  
SERGIO CABRERA-POLANCO,

Defendants.  
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiff allegedly sustained in a motor vehicle accident that occurred on February 20, 2018. Plaintiff was a passenger in defendant Cabrera-Polanco’s vehicle when the vehicle operated by defendant Navjit Singh and owned by NYC Line Contractors Inc. (“the Singh defendants”) struck defendant Cabrera-Polanco’s vehicle in the rear. Defendant Cabrera-Polanco seeks summary judgment on the ground that he is not liable for the accident. For the reasons that follow, defendant Cabrera-Polanco’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]). A rear-end collision constitutes a prima facie case of negligence on the part 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 (*see id.*).

Here, defendant Cabrera-Polanco 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]). The moving defendant submitted a copy of the pleadings, an uncertified police report and his affidavit. The moving defendant averred that his vehicle was stopped at a red traffic light on West 18th Street. At that time, the Singh defendants’ vehicle impacted the rear of defendant Cabrera-Polanco’s vehicle without warning, causing the plaintiff’s injuries.

In opposition, the Singh 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. 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]). The Singh defendants argued that the motion should be denied because defendant Cabrera-Polanco’s failed to submit evidence in admissible form, relying solely on his “self-serving” affidavit. However, an affidavit submitted by an interested party is competent evidence and is sufficient to discharge the interested party’s summary judgment burden (*see Miller v City of New York*, 253 AD2d 394, 395 [1st Dept 1998]).

The Singh defendants also argued that the motion is premature because depositions are not complete. This motion, however, is not premature because “the information as to why the defendants’ vehicle struck the rear end of the [front] 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]).

The Singh defendants further argue that the police report is inadmissible evidence. While the police report is not in admissible form (*see Silva v Lakins*, 118 AD3d 556 [1st Dept 2014]), defendant Singh's statement that the accident occurred when he looked down to clean his glasses is admissible as an admission (*see Niyazov v Bradford*, 13 AD3d 501 [2nd Dept 2004]). Because the Singh 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.

Accordingly, it is


ORDERED, that defendant Cabrera-Polanco's motion for summary judgment is granted; and it further

ORDERED, the complaint as against him and all cross claims against him are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Sergio Cabrera-Polanco dismissing the complaint as against him and all cross claims against him.

This constitutes the decision and order of the court.

Dated: December 21, 2018

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