Okeke v Aklilu
2019 NY Slip Op 35124(U)
January 3, 2019
Supreme Court, Bronx County
Docket Number: Index No. 20886/2018E
Judge: John R. Higgitt

NEW YORK SUPREME COURT – COUNTY OF BRONX

Mtn. Seq. # 01

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

----------X

OKEKE, RITA

Index №. **20886/2018E**

- against -

Hon. **JOHN R. HIGGITT**,

AKLILU SAMSON B., et ano.

A.J.S.C.

----------X

The following papers numbered **10** to **16** and **20** to **21** in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on **September 4, 2018** and duly submitted as No. **58** on the Motion Calendar of **October 30, 2018.**

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	10-16
Notice of Cross-Motion – Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	20-21
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff's motion for 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: **01/3/2019**

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

[*1]

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

----------X

RITA OKEKE,

Plaintiff,

- against -

SAMSON B. AKLILU and BISRAT AKLILU,

Defendants.

----------X

DECISION AND ORDER

Index No. 20886/2018E

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 June 27, 2017. Plaintiff was travelling on the Bronx River Parkway when the vehicle owned by defendant Bisrat Aklilu and driven by defendant Samson B. Aklilu struck plaintiff's vehicle in the rear. Plaintiff seeks partial summary judgment on the issue of defendants' liability. For the reasons that follow, plaintiff's motion is granted.

"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 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, her affidavit and a certified report police report. Plaintiff averred that she was driving on the Bronx River Parkway when defendants' vehicle rear ended plaintiff's vehicle.

In opposition, defendants failed to raise a triable issue of fact as to their liability (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants argued that the motion should be denied because plaintiff failed to submit evidence in admissible form, relying solely on her "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]).

Defendants further argue that the motion should be denied because there is a question of fact as to whether plaintiff's vehicle was stopped or moving at the time of the accident. However, regardless of whether plaintiff was moving or stopped at the time of the accident, defendants failed to maintain enough distance between their vehicle and plaintiff's vehicle (*LaMasa, supra).*

Defendants' counsel argued that the motion is premature because depositions are not complete. This motion, however, is not premature because "the information as to why [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 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 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: January 3, 2019

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