

Soltren v Patterson

2019 NY Slip Op 35126(U)

November 27, 2019

Supreme Court, Bronx County

Docket Number: Index No. 23800/2018E

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
SOLTREN, SABRINA

- against -

PATTERSON, MICHAEL A.
-----X

Index No. 23800/2018E

Hon. JOHN R. HIGGITT,
A.J.S.C.

The following papers numbered 10 to 22, 25 to 30, 32 to 37, 39, 42 to 44 and 46 in the NYSCEF System were read on this motion for SUMMARY JUDGMENT (LIABILITY), noticed on May 23, 2019 and duly submitted as No. 35 on the Motion Calendar of September 23, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	10-22
Notice of Cross-Motion – Exhibits and Affidavits Annexed	25-30, 32-37
Answering Affidavit and Exhibits	39
Replying Affidavit and Exhibits	42-44, 46
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendants’ liability is granted, defendants’ cross motion for leave to amend their answer to add an affirmative defense of sudden emergency is granted, and defendants’ cross motion for summary judgment dismissing the complaint as against them is denied, in accordance with the annexed decision and order.

Dated: 11/27/2019

Hon. 
JOHN R. HIGGITT, A.J.S.C.

Check one:

- Case Disposed in Entirety
- Case Still Active

Motion is:

- Granted
- Denied
- GIP
- Other

Check if appropriate:

- Schedule Appearance
- Fiduciary Appointment
- Referee Appointment
- Settle Order
- Submit Order

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

-----X
SABRINA SOLTREN,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 23800/2018E

MICHAEL A. PATTERSON and MICHAEL ANTHONY
DIOR PATTERSON,

Defendants.

-----X
John R. Higgitt, J.

Upon plaintiff's April 22, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; defendants' June 19, 2019 notice of cross motion and the affirmation, and exhibits submitted in support thereof; defendants' June 21, 2019 notice of cross motion and the affirmation, and exhibits submitted in support thereof; defendants' June 21, 2019 affirmation in opposition; plaintiff's August 14, 2019 affirmation in reply; defendants' September 20, 2019 reply in affirmation; and due deliberation; plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted, defendants' cross motion for leave to amend their answer to add an affirmative defense of sudden emergency is granted, and defendants' cross motion for summary judgment dismissing the complaint as against them is denied.

Plaintiff seeks summary judgment against defendants on the issue of their liability for the October 9, 2017 motor vehicle accident giving rise to this action. In support of her motion, plaintiff submitted her deposition testimony, in which she testified that the accident occurred when defendants' vehicle struck the rear of plaintiff's vehicle, which was parked on Co-op City Boulevard and in which plaintiff was sitting. Plaintiff also testified that immediately after the

accident defendant-driver made the following party admission: that he “lost control of his car.” The police accident report too contains a party admission by defendant driver; the police officer who responded to the accident recorded defendant driver as stating that “[h]e was travelling down street and was attempting to make turn into nearby bank parking lot but turned prematurely causing him to collide with [plaintiff’s] vehicle.”

Defendants first responded to plaintiff’s motion by cross-moving for leave to amend their answer to include the affirmative defense of the emergency doctrine. Defendants asserted that defendant driver was presented with the following scenario: a pedestrian suddenly and without warning entered the roadway and sprinted across it, causing defendant driver to take evasive actions that led to the accident. Defendants maintained that plaintiff would not be prejudiced by the amendment and that it has potential merit.

Two days after cross-moving for leave to amend their answer, defendants cross-moved for summary judgment dismissing the complaint on the strength of their proposed emergency-doctrine affirmative defense.

Both cross motions were supported principally by defendant driver’s deposition testimony. During his deposition, defendant driver testified that he was driving defendants’ vehicle in the left lane of a quiet Co-op City Boulevard¹ intending to make a right turn at an upcoming intersection when an individual “r[an] out into the street,” causing defendant driver to apply his brakes and swerve to his right, which evasive actions resulted in defendants’ vehicle striking plaintiff’s vehicle. When defendant driver first saw him, the individual was on Co-op City Boulevard; the individual was on defendant driver’s left and moving to the driver’s right. The individual was “sprinting.” The individual continued to run to defendant driver’s right until

¹ The accident occurred at approximately 5:00 a.m., and plaintiff testified that traffic was light.

he reached the other side of Co-op City Boulevard. Defendant driver did not make contact with the individual.

Defendant driver could not recall the following material details: how far the individual was from defendants' vehicle when defendant driver first saw the individual, the speed at which defendant driver was operating defendants' vehicle when he first saw the individual, the speed at which defendant driver was operating defendants' vehicle when he began taking evasive measures, and the distance between defendants' vehicle and plaintiff's vehicle when he first saw the individual.

When confronted at his deposition with the police accident report containing his admission that "[h]e was travelling down street and was attempting to make turn into nearby bank parking lot but turned prematurely causing him to collide with [plaintiff's] vehicle," defendant driver testified that he told an officer at the accident scene that an individual ran out into the street and that defendant driver took the above-described evasive measures. Defendant driver could not describe the officer he spoke with. Defendant driver testified that he attempted to have the police accident report amended to reflect the individual-in-the-roadway narrative, but he provided no details regarding those efforts.

In light of the liberality with which leave to amend a pleading is granted under CPLR 3025(b) and the absence of any prejudice to plaintiff in permitting defendants to amend their answer to include the emergency doctrine affirmative defense (*see Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 [2014]), defendants' cross motion seeking leave to amend is granted.

With regard to the competing motion and cross motion for summary judgment, plaintiff made a prima facie showing of entitlement to judgment as a matter of law on the issue of defendants' liability. Plaintiff was sitting in a vehicle parked on a public street that was struck in

the rear by defendants' vehicle. Therefore, plaintiff established, prima facie, that defendants are liable and that plaintiff is free from fault (*see Giap v Pham*, 159 AD3d 484 [1st Dept 2018]).

In opposition, defendants failed to raise a triable issue of fact. The only evidence submitted by defendant driver supporting his emergency-doctrine affirmative defense was his deposition testimony. But that testimony does not provide sufficient details to raise a genuine issue of fact as to the applicability of the emergency doctrine.² The emergency doctrine "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context" (*Caristo v Sanzone*, 96 NY2d 172, 174 [2001]). Given the absence of any evidence indicating how close defendants' vehicle was to the individual and the absence of any evidence regarding the speed at which defendants' vehicle was travelling, defendants' assertion that defendant driver was faced with a sudden circumstance that left little time for thought or caused him to be reasonably disturbed such that he had to make a hasty decision is purely speculative (*cf Ferrer v Harris*, 55 NY2d 285 [1982]). Moreover, even assuming that defendant driver was faced with a qualifying emergency situation, his actions were not reasonable in the context of that emergency: he turned his vehicle, which was on a quiet, two-lane street, in the direction that the individual was running and into a parking lane.

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment is granted; and it is further

² That defendants were permitted leave to amend their answer does not mean that a triable issue of fact exists as to whether the emergency doctrine applies (*see generally Baskin and Sears, P.C. v Lyons*, 188 AD2d 307 [1st Dept 1992]).

ORDERED, that defendants' motion for leave to amend their answer is granted; and it is further
ORDERED, that defendants' proposed amended answer (Exhibit C) is deemed served upon
plaintiff; and it is further

ORDERED, that defendants' cross motion for summary judgment is denied.

The parties are reminded of the February 7, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 27, 2019



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