

Dawkins v Kennedy

2019 NY Slip Op 35133(U)

November 26, 2019

Supreme Court, Bronx County

Docket Number: Index No. 22042/2018E

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
DAWKINS, PAUL

Index No. 22042/2018E

- against -

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

KENNEDY, ROBERT M., et al
-----X

The following papers numbered 31 to 40 and 43 to 47 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (LIABILITY)**, noticed on August 14, 2019 and duly submitted as No. 25 on the Motion Calendar of October 16, 2019

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	31-38
Notice of Cross-Motion – Exhibits and Affidavits Annexed	43-47
Answering Affidavit and Exhibits	39-40
Replying Affidavit and Exhibits	
Filed Papers	
Memoranda of Law	
Stipulations	

Upon the foregoing papers, plaintiff’s motion for partial summary judgment on the issue of defendants’ liability for causing the subject accident is granted in part, and the cross motion of defendants Borjas-Bonilla and Gillespie is granted, in accordance with the annexed decision and order.

Dated: 11/26/2019

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
PAUL DAWKINS,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 22042/2018E

ROBERT M. KENNEDY, SR., RUBEN BORJAS-
BONILLA, and JENNIFER M. GILLESPIE,

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 September 15, 2017. Plaintiff moves for summary judgment on the issue of defendants' liability for causing the subject accident. Defendants Borjas-Bonilla and Gillespie ("the Borjas-Bonilla defendants") cross-move for summary judgment dismissing the complaint as against them and all cross claims against them. For the reasons that follow, plaintiff's motion for partial summary judgment is granted in part, and the Borjas-Bonilla defendants' cross motion is granted.

In support of his motion for summary judgment, plaintiff submits the pleadings, the police accident report, his affidavit, and the transcript of his deposition testimony. Plaintiff testified that he was involved in a three-vehicle motor vehicle accident in which his vehicle was the first vehicle in the chain. At the time of the accident, plaintiff's vehicle had slowed down due to heavy traffic on the Bronx River Parkway when the Borjas-Bonilla's vehicle struck the rear of plaintiff's vehicle. Plaintiff also testified that before the accident took place he witnessed defendant Kennedy, the third vehicle in the chain, strike the Borjas-Bonilla defendants' vehicle.

In support of their cross motion, the Borjas-Bonilla defendants submit the transcript of defendant Borjas-Bonilla's deposition testimony. Defendant Borjas-Bonilla testified that he was

driving behind plaintiff's vehicle when defendant Kennedy's vehicle struck the rear of the Borjas-Bonilla defendants' vehicle, propelling it into plaintiff's vehicle.

“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 non-negligent 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 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 (*id.*).

Plaintiff made a prima facie showing of entitlement to judgment as a matter of law on the issue of defendant Kennedy's liability for the subject accident, and the Borjas-Bonilla defendants made a prima facie showing of entitlement to judgment as a matter of law dismissing the complaint as against them and the cross claims against them.

In opposition to the movants' motions, defendant Kennedy submits an affidavit in which he averred that the accident occurred because the Borjas-Bonilla defendants' vehicle made a sudden stop.

Generally, a claim that the driver of a rear-ended vehicle made a sudden stop is insufficient to constitute a non-negligent explanation for the accident (*see Bajrami v Twinkle Cab Corp.*, 147 AD3d 649[1st Dept 2017]). Thus, the general rule regarding liability for rear-end accidents "has been applied when the front vehicle stops suddenly in slow-moving traffic; even if the sudden stop is repetitive; when the front vehicle, although in stop-and-go traffic, stopped while crossing an intersection; and when the front car stopped after having changed lanes" (*Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]). Additionally, "[a] driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle" (*Nsiah-Ababio v Hunter*, 78 AD3d 672, 672 [2d Dept 2010]). While a sudden stop by a rear-ended vehicle on a highway with *normal* traffic conditions may provide the driver of the rear vehicle with a non-negligent explanation (*see Baez-Pena v MM Truck & Body Repair, Inc.*, 151 AD3d 473 [1st Dept 2017]), here, by defendant Kennedy's own account, traffic on the highway was "heavy." Thus, defendant Kennedy's claim that the Borjas-Bonilla defendants' vehicle made a sudden stop is insufficient to raise a triable issue of fact.

Because plaintiff's prima facie showing of defendant Kennedy's liability went un rebutted and the Borjas-Bonilla defendants' prima facie showing of their freedom from negligence went un rebutted, plaintiff's summary judgment motion is granted as against Kennedy and the Borja-Bonilla defendants' summary judgment motion is granted.

The court notes that plaintiff did not seek (and the court has not considered) dismissal of defendant Kennedy's affirmative defenses 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 the liability of defendant Kennedy is granted; and it is further

ORDERED, that plaintiff's motion is otherwise denied; and it is further


ORDERED, that the Borjas-Bonilla defendants' cross motion for summary judgment is granted, and the complaint as against them and the cross claims against them are dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of the Borjas-Bonilla defendants dismissing the complaint as against them and the cross claims against them.

The parties are reminded of the March 13, 2020 compliance conference before the undersigned.

This constitutes the decision and order of the court.

Dated: November 26, 2019



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