Blake v Santos
2019 NY Slip Op 35137(U)
July 23, 2019
Supreme Court, Bronx County
Docket Number: Index No.: 24857/2018E
Judge: ShawnDya L. Simpson
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART: 17

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BLAKE, TYSHA Index №. 0024857/2018E

-against- Hon. Shawndya L. Simpson

SANTOS, ENRIQUE Justice Supreme Court

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The following papers numbered 1 to _____ Read on this motion, (Seq. No. 1) for **SUMMARY JUDGMENT LIABILITY**, noticed on **June 17 2019**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is granted in accordance to the Attached decision.

Motion is Respectfully Referred to Justice: _____
Dated: _____

Dated: 7/24/19 Hon. Shawndya L. Simpson, J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT

[*1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 17

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TYSHA BLAKE,

Plaintiff,

- against –

ENRIQUE SANTOS & GLADYS GARCIA-MARTIR

Defendants.

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DECISION AND ORDER

Index No. 24857/2018E

Shawndya L. Simpson, J.:

INTRODUCTION

On November 4, 2017, plaintiff operated a vehicle said to have been in an accident with a vehicle operated by defendant Santos, said to be owned by defendant Garcia-Martir. Plaintiff alleges she was rear-ended as she was driving her vehicle at the intersection of Claremont Parkway and Third Avenue in Bronx county. By notice of motion dated May 23, 2019, and the affirmation and exhibits submitted in support thereof along with all the pleadings and proceedings heretofore, plaintiff seeks summary judgment pursuant to Civil Practice Law and Rules (CPLR) against defendants on the issue of liability. Defendants filed an affirmation in opposition dated June 13, 2019. For the foregoing reasons, after review and consideration of the filings and proceedings, plaintiff's motion for summary judgment on the issue of liability is granted.

In support of the motion, plaintiff submits the summons, complaint, answer, plaintiff's deposition transcript, and defendant Santos' deposition transcript. In opposition, the defendants submit their counsel's affirmation. No other documents or exhibits are attached.

[*2]

DISCUSSION

Plaintiff has established her entitlement to summary judgment on the issue of liability against defendants (*see Bajrami v. winkle Cab Corp.*, 147 A.D.3d 649 [App. Div., 1st Dept. 2017]). It is alleged that defendant Santos was driving too close to plaintiff's vehicle. Defendants do not dispute plaintiff's claim that defendant was driving to close. Defendants' vehicle is said to have struck plaintiff after failing to properly observe and maintain a reasonable safe distance from plaintiff's vehicle. It is said plaintiff's vehicle was in front of defendant and that defendant caused the rear-end collision. Plaintiff claims that at the intersection she proceeded to make a left turn when the light turned green and the intersection was clear. Plaintiff alleges she had to stop at the crosswalk as she was about to make the turn because pedestrians were crossing in the crosswalk. Plaintiff states that when she stopped she was suddenly rear-ended and did not have an opportunity to avoid the accident or prevent the defendant from striking her vehicle. Plaintiff asserts that defendants are solely responsible for the accident.

Defendants excuse for the accident is that a pedestrian caused plaintiff to stop suddenly and that defendant Santos was faced with an emergency situation relieving them of liability. Defendant claims that he could not prevent the accident in order to avert collision with the pedestrian. Defendants argue that plaintiff's statements that it was about thirty seconds from the time she stopped and the impact are in contradiction with defendants version and consequently there are issues of fact that require a trial. Defendants argue that the "emergency doctrine" applies and that since he was left with little or no time to react he is not negligent in this case. However, defendants' argument does not overcome plaintiff's *prima facie* showing.

The general rule on 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 A.D.2d 269, 271 [App. Div., 1st Dept. 1999]). The sudden stop of the lead vehicle, without more (*see Cabrera v. Rodriguez*, 72 A.D.3d 553 [App. Div., 1st Dept. 2010]), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*Woodley v. Ramirez*, 25 A.D.3d 451, 452 [App. Div, 1st Dept. 2006] [citations omitted]). The rear-end collision of a vehicle itself provides a *prima facie* showing of negligence on the part of the rearmost driver in a collision with a stopped or stopping vehicle (*see Cabrera v. Rodriguez*, *supra*). In this case, defendants' argument does not overcome the evidence that he was operating his vehicle to closely to plaintiff. Defendant Santos' self serving statement, is not corroborated and instead supports to view that he was driving to closely to the plaintiff's vehicle. "[T]he burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Id.* at 553, *citing Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, [1986]). Defendants have not proffered sufficient evidence for denial of the motion.

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 N.Y.2d 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.*). Under these circumstances, plaintiff is entitled to summary judgment on the issue of liability against defendants given the undisputed fact that defendant was driving too close to plaintiff's vehicle (*see Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 [1975]).

Furthermore, defendants did not attach firsthand sworn testimony to controvert plaintiff's

evidence that defendants unreasonably caused the accident. "Facts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted" (*Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539, 544; *Tortorello v. Carlin*, 260 A.D.2d 201 [App. Div., 1st Dept. 1999]), and defendants did not rebut with firsthand evidence plaintiff's assertion that defendant Santos unreasonably caused the accident.

The evidence submitted in support of the motion has established a *prima facie* case that defendant Santos failed to keep a safe distance to avert the collision. Defendants failed to rebut the presumption of their negligence (*see Dattilo v. Best Transp. Inc.*, 79 A.D.3d 432 [App. Div., 1st Dept. 2010]), and the presumption of the non-negligence of the rear-ended driver (*see Francisco v. Schoepfer*, 30 A.D.3d 275 [App. Div., 1st Dept. 2006]; *Woodley v. Ramirez*, 25 A.D.3d 451, 452). Plaintiff is entitled to a judgment of liability as a matter of law (*see Cabrera v. Rodriguez*, *supra*; *Myrie v. Atehortua*, 275 A.D.2d 699 [App. Div., 2nd Dept. 2000]; *Gladstone v. Hachuel*, 225 A.D.2d 730 [App. Div., 2nd Dept. 1996]; *Reid v. Courtesy Bus Co.*, 234 A.D.2d 531 [App. Div., 2nd Dept. 1996]; *see also, Carlos Rodriguez v. City of NY*, 31 N.Y.3d 312 [2018]). Consequently, the motion for summary judgment against the defendants on the issue of liability is granted.

CONCLUSION

Accordingly, it is:

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

This constitutes the decision and order of the court.

Dated: Bronx, New York
July 23, 2019

The Honorable Shawndya L. Simpson
Justice of the Supreme Court