

**Diaz v Rodriguez**

2019 NY Slip Op 35148(U)

March 25, 2019

Supreme Court, Bronx County

Docket Number: Index No. 26644/2018E

Judge: John R. Higgitt

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

-----X  
DIAZ, NOEMI, et al

Index No. 26644/2018E

- against -

Hon. JOHN R. HIGGITT,

RODRIGUEZ, FELIX, et al

A.J.S.C.

The following papers numbered 16 to 40 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (DEFENDANT)**, noticed on December 10, 2018 and duly submitted as No. 37 on the Motion Calendar of January 28, 2019.

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	16-23
Notice of Cross-Motion – Exhibits and Affidavits Annexed	25-36
Answering Affidavit and Exhibits	38-39
Replying Affidavit and Exhibits	37, 40
Filed Papers	
Memoranda of Law	
Stipulations	24

Upon the foregoing papers, defendant Martinez’s motion for summary judgment dismissing the complaint and the cross motion of defendants Dora M. Occhino and Alfi J. Occhino are granted, in accordance with the annexed decision and order.

Dated: 03/25/2019

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

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

-----X  
NOEMI DIAZ, MARTHA RODRIGUEZ, ROBERT  
ZAPATA and ALTAGRACIA CHAVEZ,

DECISION AND ORDER

Plaintiffs,

Index No. 26644/2018E

- against -

FELIZ RODRIGUEZ, ALFI J. OCCHINO, DORA M.  
OCCHINO and SABINO MARTINEZ,

Defendants.  
-----X

John R. Higgitt, J.

This is a negligence action to recover damages for personal injuries plaintiffs allegedly sustained in a multi-motor vehicle accident that took place on September 11, 2016. The accident occurred when the subject vehicles were traveling southbound on Interstate-87. At that time the vehicle operated by defendant Alfi J. Occhino and owned by defendant Dora M. Occhino (“the Occhino defendants”) was stopped due to traffic in front of defendant Martinez’s vehicle. The accident occurred when the vehicle operated by defendant Rodriguez struck defendant Martinez’s vehicle in the rear propelling it into the Occhino defendants’ vehicle. Plaintiffs were passengers in defendant Rodriguez’s vehicle. Defendant Martinez seeks summary judgment dismissing the complaint as against him on the ground that he not liable for the accident. The Occhino defendants cross-move for summary judgment dismissing the complaint as against them. For the reasons that follow, defendant Martinez’s motion and the Occhino defendants’ cross motion are 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 establishes 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.*).

Defendant Martinez 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]). Defendant Martinez submitted a copy of the pleadings, a copy of the police report and his affidavit. Defendant Martinez averred that he was stopped behind the Occhino defendants’ vehicle due to traffic when the vehicle operated by defendant Rodriguez struck the rear of his vehicle, propelling his vehicle into the Occhino defendants’ vehicle.

With respect to the cross motion, the Occhino defendants submit a copy of the pleadings, a certified copy of the amended police report, the affidavit of defendant Alfi J. Occhino and the police report. The Occhino defendants also satisfied their prima facie burden establishing entitlement to judgment as a matter of law on the issue of their liability (*see* CPLR 3212[b]). Defendant Alfi averred that he was traveling southbound on Interstate 87 when he had to come to

a stop due to heavy traffic. At that time, defendant Martinez's vehicle struck his vehicle in the rear. Defendant Alfi averred that at no time did his vehicle come to a stop short or change lanes.

In opposition to both the motion and cross motion, defendant Rodriguez failed to raise a triable issue of fact as to defendant Martinez's or the Occhino defendants' liability. Defendant Rodriguez submitted his affidavit and averred that the accident took place when the Occhino defendants' vehicle came to a sudden stop, causing the Martinez' defendant to strike the Occhino defendants' vehicle. Defendant Rodriguez further testified that after the collision between the Occhino defendants' vehicle and defendant Martinez's vehicle Rodriguez's vehicle struck the rear of Martinez's vehicle.

Defendant Rodriguez's affidavit failed to raise a triable issue of fact as to his liability. 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]). The sudden stop of the lead vehicle, without more (*see Cabrera, supra*), "is generally insufficient to rebut the presumption of non-negligence on the part of the lead vehicle" (*Woodley v Ramirez*, 25 AD3d 451, 452 [1st Dept 2006]).

Additionally, defendant Rodriguez's statement that he was travelling at approximately 30 miles per hour and that he was two car lengths behind defendant Martinez's vehicle prior to the accident demonstrated that Rodriguez was traveling too closely to Martinez's vehicle, and was not able, in the exercise of reasonable care, to avoid a collision once the Occhino defendants had to stop their vehicle (*see Mullen v Rigor*, 8 AD3d 104 [1st Dept 2004]). Because defendant Rodriguez failed to rebut the presumption of his negligence (*see Dattilo v Best Transp. Inc.*, 79

AD3d 432 [1st Dept 2010]), defendant Martinez's motion and the Occhino defendants' cross motion are granted.

Accordingly, it is

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

ORDERED, that the Occhino defendants' cross motion for summary judgment is granted; and it further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendants Alfi J. Occhino, Dora M. Occhino and Sabino Martinez, dismissing the complaint as against them and all cross claims against them.

This constitutes the decision and order of the court.

Dated: March 25, 2019

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