

Montan v Vrettos

2020 NY Slip Op 35654(U)

February 28, 2020

Supreme Court, Bronx County

Docket Number: Index No. 21690/2018E

Judge: John R. Higgitt

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



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

-----X
MONTAN, LLERYN

Index No. 21690/2018E

- against -

Hon. JOHN R. HIGGITT,

VRETTOS, NICOLAS, et ano
-----X

J.S.C.

The following papers numbered 19 to 30 and 34 to 39 in the NYSCEF System were read on this motion for **SUMMARY JUDGMENT (DEFENDANT)**, noticed on November 12, 2019 and duly submitted as No. 31 on the Motion Calendar of January 13, 2020

| | NYSCEF Doc. Nos. |
|--|------------------|
| Notice of Motion – Exhibits and Affidavits Annexed | 19-30 |
| Answering Affidavit and Exhibits | 34-37 |
| Replying Affidavit and Exhibits | 38-39 |
| Filed Papers | |
| Memoranda of Law | |
| Stipulations | |

Upon the foregoing papers, defendant Jimenez’s motion for summary judgment dismissing the complaint as against him is granted, in accordance with the annexed decision and order.

Dated: 02/28/2020

Hon. 
JOHN R. HIGGITT, 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
LLERYN MONTAN,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 21690/2018E

NICOLAS VRETTOS and WELLINGTON JIMENEZ,

Defendants.
-----X

John R. Higgitt, J.

Upon defendant Jimenez’s October 7, 2019 notice of motion and the affirmation, affidavit, and exhibits submitted in support thereof; plaintiff’s December 27, 2019 affirmation in opposition and the exhibits submitted therewith; defendant Jimenez’s January 10, 2020 affirmation in reply; and due deliberation; defendant Jimenez’s motion for summary judgment dismissing the complaint as against him is granted.

This is a negligence action to recover damages for personal injuries that plaintiff allegedly sustained in a motor vehicle accident that took place on October 10, 2016.¹ Defendant Jimenez seeks summary judgment dismissing the complaint as against him. In support of his motion defendant Jimenez submits the pleadings, the police accident report, the transcripts of defendant Vrettos’ and plaintiff’s deposition testimony, and his affidavit.

Defendant Jimenez averred that he was traveling eastbound in the right lane on the Cross Bronx Expressway when he began to slow his vehicle’s speed due to the presence of a stopped vehicle ahead. Defendant Jimenez averred that, after he had reduced the speed of his vehicle, defendant Vrettos’ vehicle collided with the rear of Jimenez’s vehicle.

¹ On May 22, 2018, plaintiff discontinued the action as against defendant Vrettos.

Defendant Vrettos testified that, immediately before the accident occurred, he was traveling behind a truck in the right lane of the eastbound Cross Bronx Expressway. The truck abruptly moved from the right lane to the middle lane. Defendant Vrettos, travelling at approximately 50 miles per hour behind the truck, saw defendant Jimenez's vehicle, depressed his brakes, and moved his vehicle toward the middle lane. Defendant Vrettos was unable to avoid striking defendant Jimenez's vehicle.

Plaintiff testified that she was a passenger in defendant Vrettos' vehicle, but that she did not witness the accident, and she did not see defendant Jimenez's vehicle before the accident. Plaintiff testified that she became aware of the accident after she felt the impact between the vehicles.

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]). Thus, a driver has a duty to maintain a reasonably safe distance between his or her vehicle and the vehicle ahead.

In opposition to defendant Jimenez's prima facie showing of entitlement to judgment as a matter of law plaintiff failed to raise a triable issue of fact as to Jimenez's liability.

Plaintiff's argument that defendant Jimenez's vehicle was in the process of merging at the time of the accident is speculative and insufficient to raise a triable issue of fact. Defendant Vrettos points to no evidence in admissible form supporting his assertion that defendant Jimenez was merging into Vrettos' lane of travel. Notably, defendant Vrettos admitted in the police-accident report that defendant Jimenez's vehicle was stopped when the collision occurred. To the extent that defendant Vrettos' testimony could be interpreted as suggesting that defendant

Jimenez's vehicle was not stopped, that suggestion clearly contradicts his earlier police-report admission (which Vrettos does not deny making) (*see Phillips v Bronx Lebanon Hosp.*, 268 AD2d 318 [1st Dept 2000]; *see also Colon v Vals Ocean Pac. Sea Food, Inc.*, 157 AD3d 462 [1st Dept 2018] [police report]; *Garzon-Victoria v Okolo*, 116 AD3d 558 [1st Dept 2014] [police report]). In any event, at one point in his testimony defendant Vrettos testified that he saw defendant Jimenez's vehicle stopped or stopping just before the accident.

The court notes that the action as against defendant Vrettos was discontinued as per the May 22, 2018 stipulation of discontinuance between plaintiff and Vrettos.

Accordingly, it is


ORDERED, that defendant Jimenez's motion for summary judgment is granted, and the complaint as against him is dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant Jimenez dismissing the complaint as against him; and it is further

ORDERED, that the Clerk of the Court shall dispose of the case in its entirety because the action as against defendant Vrettos was discontinued as per the May 22, 2018 stipulation of discontinuance between plaintiff and Vrettos

This constitutes the decision and order of the court.

Dated: February 28, 2020



John R. Higgin, J.S.C.