

Li--Jun Chen v Reeves
2013 NY Slip Op 31470(U)
July 1, 2013
Supreme Court, Queens County
Docket Number: 24075/2011
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

LI-JUN CHEN,
Plaintiff,

Index No.: 24075/2011

- against -

Motion Date: 06/17/13

JOHN W. REEVES,
Defendant.

Motion No.: 26

Motion Seq.: 1

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JOHN W. REEVES,
Third-Party Plaintiff,

Index No. 350593/2011

- against -

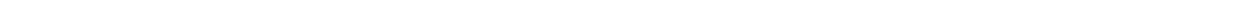
SUN WEN YAO,
Third-Party Defendant.

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The following papers numbered 1 to 10 were read on this motion by the plaintiff, Li-Jun Chen, for an order pursuant to CPLR 3025(b) granting plaintiff leave to file a supplemental summons and amended complaint to add third-party defendant SUN WEN YAO as a direct defendant; and for an order granting partial summary judgment on the issue of liability to the plaintiff who was a passenger in the motor vehicle operated by third-party defendant SUN WEN YAO; and for an order extending the plaintiff's time to file a note of issue:

Papers Numbered

Notice of Motion-Affidavits-Exhibits.....1 - 7
Defendant Yao's Affirmation in Opposition.....8 - 10



In this negligence action, the plaintiff, Li-Jun Chen seeks to recover damages for personal injuries she allegedly sustained as a result of a motor vehicle accident that occurred on January 30, 2011, between the vehicle owned and operated by her husband, Sun Wen Yao, and the vehicle owned and operated by the defendant John W. Reeves. The accident took place at the intersection of Main Street and Horace Harding Expressway, Queens County, New York. At the time of the accident, the plaintiff was a passenger in the vehicle operated by Sun Wen Yao. Plaintiff alleges that as a result of the accident she sustained serious injuries including a tear of the ACL of the right knee, a torn meniscus of the right knee and a tear of the supraspinatus tendon of the left shoulder.

After plaintiff commenced its action, defendant John W. Reeves commenced a third-part action against defendant Yao. A preliminary conference was held on May 9, 2012 and a compliance conference was held on November 5, 2012. Plaintiff filed a note of issue on April 23, 2013. Plaintiff now moves for an order granting leave to amend the caption to add third-party defendant Yao as a direct defendant and for leave to serve Yao with a supplemental summons and complaint in the form annexed to the motion. In addition, plaintiff LI-Jun Chen moves pursuant to CPLR 3212(b), for an order granting partial summary judgment on the issue of liability against defendants Reeves and Yao.

In support of the motion, plaintiff submits an affirmation from counsel, Dennis P. Ryan, Esq., a copy of the police accident report, plaintiff's verified bill of particulars; and copies of the transcripts of the examinations before trial of plaintiff Li-Jun Chen, defendant John Reeves and defendant Sun Wen Yao.

The description of the accident contained in the police accident report is based upon statements made by the drivers to the police officer at the scene. Defendant Reeves stated to the police that he was traveling northbound on Main Street crossing the intersection of Horace Harding Expressway when Yao made a left turn in front of his vehicle causing him to collide with Yao's vehicle. Yao told the officer that he was making a left turn when Reeves vehicle collided with his vehicle.

Mr. Reeves testified at his examination before trial that on January 30, 2011, at approximately 10:00 a.m. he had left his home and was traveling north on Main Street with his two daughters heading towards a church on Ash Avenue in Flushing. He stated that when he reached the intersection of Horace Harding Expressway there was a green traffic signal in his direction. He observed defendant Yao's vehicle stopped in the left turn lane on

the southbound side of Main Street. As he entered the intersection with the traffic signal in his favor Yao's vehicle made a left turn directly in front of Reeves' vehicle causing the front of his vehicle to collide with the passenger side of the Yao vehicle.

Yao, age 72, testified that his wife, plaintiff herein, was seated next to him in the front passenger seat. He was coming from his home on Northern Boulevard and traveling on Main Street on his way to Long Island. When he reached Horace Harding Boulevard he entered the left lane, put on his left turn signal intending to turn left onto Horace Harding. He stated that he waited until the left turn arrow turned green and then he began to make the left turn. He testified that when he was two-thirds of the way across the intersection he observed the Reeves vehicle about 100 yards away proceeding at a rate of speed of 50 mph. As he continued across the intersection his vehicle was struck on the passenger side door by the Reeves vehicle.

LI-Jun Chen testified at her examination before trial on November 6, 2012. She testified that she is married to defendant Sun Wen Yao. She stated that on the date of the accident she was seated next to her husband in the front passenger seat. She said they were proceeding southbound on Main Street heading towards the Long Island Expressway. She stated that when they approached Horace Harding Expressway intending to turn left she observed that the left turn arrow was green. She stated that because her husband saw that the arrow was green he proceeded to make the left turn. As they were in the intersection they were struck by the minivan operated by defendant Reeves. The Reeves vehicle struck their vehicle in the right passenger side door. She stated that as the Reeves vehicle approached their vehicle she only saw it for a split second before it struck her vehicle. She stated that the impact was heavy. It caused the air bags to deploy and pushed their vehicle into a light pole at the corner of Main Street and Horace Harding. She stated that when the police arrived on the scene they cut off the passenger side door in order to free her from the vehicle. She left the scene in an ambulance and was transported to the emergency room at Queens Hospital Center in Flushing.

Defendant Reeves has not submitted opposition to the motion. Defendant Yao does not oppose the motion for summary judgment. Yao only requests that the plaintiff supply all outstanding authorizations for plaintiff's medical/hospital records and any films taken.

Upon review and consideration of the plaintiff's motion and defendant's affirmation in opposition thereto, this court finds as follows:

That branch of the plaintiff's motion for an order granting leave to amend the complaint to add SUN WEN YAO as a direct party-defendant in the main action is granted. CPLR Section 3025 (b) provides:

(b) Amendments and supplemental pleadings by leave. A party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances.

In the absence of significant prejudice or surprise to the opposing party, leave to amend a pleading should be freely given (see CPLR 3025[b]; Edenwald Contr. Co. v City of New York, 60 NY2d 957 [1983]; Russo v Lapeer Contr. Co., Inc., 84 AD3d 1344 [2d Dept. 2011]);) unless the proposed amendment is palpably insufficient or patently devoid of merit (see Bernardi v Spyratos, 79 AD3d 684 [2d Dept. 2010]; Martin v Village of Freeport, 71 AD3d 745 [2d Dept. 2010]; Malanga v Chamberlain, 71 AD3d 644 [2d Dept. 2010]; Uadi, Inc. v Stern, 67 AD3d 899 [2d Dept. 2009]); Lucido v Mancuso, 49 AD3d 220 [2d Dept. 2008]). Here, the proposed amendment is not palpably insufficient or devoid of merit, and there is no prejudice to defendant in allowing the plaintiff to amend the complaint to add SUN WEN YAO as an additional party-defendant in the main action (see CPLR 3025[b]; Emilio v Robison Oil Corp., 28 AD3d 417[2d Dept. 2006]).

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion to show the existence of material issues of fact by providing evidentiary proof in admissible form in support of his position (see Zuckerman v. City of New York, 49 NY2d 557[1980]).

Here, although the evidence submitted demonstrates there is a question of fact with respect to the liability for the accident as between the driver of the host vehicle, Mr. Yao and defendant Mr. Reeves, plaintiff was an innocent passenger who cannot be found at fault under any version of how the accident occurred. The right of the plaintiff, as an innocent passenger to an award of summary judgment on the issue of liability against the defendants is not barred or limited by the existence of any

unresolved questions as to the apportionment of fault between Yao and Reeves (see Brabham v City of New York, 105 AD3d 881 [2d Dept. 2013]; Anzel v Pistorino, 105 AD3d 784 [2d Dept. 2013]; Mello v. Narco Cab Corp., 105 AD3d 634 [2d Dept. 2013]; Medina v Rodriguez, 92 AD3d 850 [2d Dept. 2012]). Further, neither defendant contested the plaintiff's motion for partial summary judgment and there was no proof of any action on the part of the plaintiff that contributed to the accident.

Accordingly, for the above stated reasons, it is hereby,

ORDERED, that upon personal service of a copy of the proposed amended summons and amended verified complaint upon SUN WEN YAO in the form annexed to the moving papers, together with a copy of this order with notice of entry, SUN WEN YAO shall be added as additional party-defendant in the main action, and it is further,

ORDERED, that said additional party shall be served within twenty days of the date of entry of this order, and it is further,

ORDERED, that the plaintiff, LI-JUN CHEN, shall have partial summary judgment on the issue of liability against the defendants JOHN W. REEVES and SUN WEN YAO and the Clerk of Court is authorized to enter judgment accordingly; and it is further,

ORDERED, that the plaintiff is directed to furnish defendant YAO with HIPAA compliant authorizations for all of plaintiff's medical and hospital records related to this action within 15 days from the date of entry of this order.

Dated: July 1, 2013
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.