

Katikireddy v Espinal
2014 NY Slip Op 30693(U)
March 12, 2014
Supreme Court, Suffolk County
Docket Number: 11-20542
Judge: Joseph Farneti
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH FARNETI
Acting Justice Supreme Court

MOTION DATE 8-1-13 (#003)
MOTION DATE 9-12-13 (#004)
ADJ. DATE 9-12-13

Mot. Seq. # 003 - MotD
004 - XMD

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CHANDRA K. KATIKIREDDY AND DEEPA
KUMMATI,

Plaintiffs,

- against -

JOSE A. ESPINAL, NEW PENN MOTOR
EXPRESS, INC., I/S/H/A YRC WORLDWIDE
INC., D/B/A NEW PENN MOTOR EXPRESS,
SEAN GIBBONS AND WILLIAM'S VILLAGE
INC., VILLAGE TAXI,

Defendant.

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JOSE A. ESPINAL, NEW PENN MOTOR :
EXPRESS, INC., I/S/H/A YRC WORLDWIDE :
INC., D/B/A NEW PENN MOTOR EXPRESS, :
 :
 :
Third-Party Plaintiffs, :
 :
 :
- against - :

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LINDY'S TRANSPORTATION INC., :
 :
 :
 Third-Party Defendant. :

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Upon the following papers numbered 1 to 21, read on this motion for partial summary judgment; and this cross motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 8; Notice of Cross Motion and supporting papers 9 - 11; Answering Affidavits and supporting papers 12 - 21; Replying Affidavits and supporting papers ; Other ; it is,

ORDERED that the motion by plaintiffs for summary judgment on the issue of liability is granted in their favor only as to defendants Jose A. Espinal and New Penn Motor Express, Inc. i/s/h/a YRC Worldwide Inc., d/b/a New Penn Motor Express; and it is further

ORDERED that the cross motion by defendants Sean Gibbons and William's Village Inc. d/b/a Village Taxi for summary judgment dismissing the complaint and any cross claims as asserted against them is denied.

Plaintiffs, Chandra K. Katikireddy ("Katikireddy"), and his wife derivatively, commenced this action seeking to recover damages for personal injuries he sustained in an automobile accident on September 16, 2010, at the intersection of Veterans Memorial Highway ("Vets Highway") and Lincoln Avenue in the Town of Islip. Plaintiff was a passenger in the back seat of a taxi operated by defendant Sean Gibbons ("Gibbons") and owned by defendant William's Village, Inc. d/b/a Village Taxi ("Village Taxi") when a collision occurred with the tractor portion of an 18-wheel trailer truck operated by defendant Jose A. Espinal ("Espinal") and owned by defendant New Penn Motor Express, Inc. i/s/h/a YRC Worldwide, Inc., d/b/a New Penn Motor Express ("New Penn"). The intersection is controlled by a traffic signal. The taxi was traveling westbound on Vets Highway **at about 45 miles per hour** and had a green light. The truck was in the eastbound lane attempting to make a left turn from Vets Highway onto Lincoln Avenue **in front of the taxi**.

In the complaint as amplified by the bill of particulars, plaintiffs allege the defendant drivers negligently and recklessly operated their respective vehicles in violation of the Vehicle and Traffic Laws ("VTL"). In their respective answers, Espinal and New Penn, and Gibbons and Village Taxi, each deny liability and assert cross claims for negligence against the other.

Plaintiffs now move for partial summary judgment in their favor on the issue of liability against defendants Espinal and New Penn on the grounds that Espinal made an unsafe left turn in front of the taxi. Alternatively, plaintiffs seek partial summary judgment against all the defendants on the grounds that Katikireddy was an innocent passenger in the taxi free from any comparative negligence. In support of their motion, plaintiffs rely on, among other things, the deposition testimony of Gibbons and Katikireddy and a certified police report containing Espinal's statement and four nonparty eyewitness statements.

Gibbons and Village Taxi oppose the motion to the extent that the plaintiffs seek summary judgment on the issue of liability against all defendants, and cross move for summary judgment dismissing the complaint and any cross claims asserted against them. Gibbons and Village Taxi argue that there is no issue of fact regarding their conduct, as the sole proximate cause of the accident was Espinal's negligence in attempting to make a left turn when it was not prudent to do so. In support, these defendants rely on the exhibits submitted by the plaintiffs.

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Espinal and New Penn oppose the motion and cross motion arguing that there are material factual issues which cannot be resolved in the absence of a trial. Specifically, it is argued that as reported by and testified to by the nonparty eyewitnesses, Gibbons was inattentive as the taxi collided with the tractor-trailer, the taxi was being driven erratically and aggressively, Gibbons failed to slow down to avoid the collision, and the 18-wheel tractor was clear to make the left turn. It is further argued that summary judgment against all the defendants should be denied as it is within the province of the jury to apportion fault, if any.

Based on the deposition testimony of Gibbons and Katikireddy, Gibbons was driving the taxi westbound on Vets Highway within the speed limit with Katikireddy in the back seat. The taxi was in the left thru lane of Vets Highway and the traffic control signal in favor of Gibbons was green. They both also testified that the taxi had remained in the left thru lane on Vets Highway and had not changed lanes just prior to the subject intersection. Gibbons testified that he saw the 18-wheeler turning in front of him, slammed on the brakes, turned the steering wheel to the right but could not avoid the collision. Katikireddy testified that he heard the taxi driver scream, instantaneously felt him hit the brakes, looked up from checking his email, and saw the 18-wheeler turning in front of the taxi. The front of the taxi collided with the rear passenger side of the tractor portion which was pulling the trailer truck. They both testified that the accident happened very fast.

Espinal does not dispute that the light was green but asserts that when he first saw the taxi about a quarter of a mile away, it was in the left thru lane on Vets Highway and then moved into the left turning lane about 300 feet before Lincoln Avenue. According to Espinal, the taxi had its left turn signal on and no other vehicles were approaching, so he proceeded to turn the 18-wheeler left onto Lincoln Avenue. As he was turning, the front of the taxi collided with the rear passenger side of the tractor portion which was pulling the trailer. Espinal testified that the last time he observed the taxi it was in the left turning lane on Vets Highway three to four car lengths from the intersection with Lincoln Avenue.

Three of the nonparty eyewitnesses who provided written statements to the police at the scene were deposed, along with an additional eyewitness who did not provide a written statement. Carmela Bertolino ("Bertolino") testified that she was driving about two car lengths behind the taxi in the left lane on Vets Highway. She approximated their rate of speed at 40 miles per hour the entire time she was behind the taxi and until the collision. According to Bertolino, the taxi did not change lanes, did not have its left turn directional signal illuminated, and was not speeding or erratic during the time she was behind it. Bertolino testified that before the collision, she had quickly glanced to the floor of her car when she heard her cell phone drop and when she looked up again, the 18-wheeler was turning left onto Lincoln Avenue in front of the taxi which was still proceeding straight in the left thru lane of Vets Highway. She did not see the taxi slow down but saw it attempt to swerve before hitting the side of the tractor in the subject intersection. The tractor of the 18-wheeler dragged the taxi a few feet and stopped in the right lane of Vets Highway. Bertolino testified that she was able to slow down as she was still about two car lengths behind the taxi; she brought her vehicle to a stop about 25 feet from the intersection.

Another eyewitness, Edward Reitzel ("Reitzel"), who did not make a written report, testified that

he was a passenger in a van in the right lane on Vets Highway heading westbound with his wife and two children going to MacArthur Airport for a flight to Florida. Reitzel testified that he first saw the taxi when it was behind his van in the right lane of Vets Highway. According to Reitzel, and contrary to the testimony of Katikireddy, Gibbons and Bertolino, the taxi was being driven erratically and at an excessive speed which he guessed was about 60 miles per hour, and aggressively changed from the right lane into the left lane to pass his van. At the time it passed the van, the taxi was about five or six car lengths from the Lincoln Avenue intersection, when, Reitzel testified, he saw the 18-wheeler starting to make the left turn. Reitzel saw the taxi speeding in the left thru lane on Vets Highway, remembered thinking to himself that the taxi was not going to make it in front of the truck, and then saw the taxi hit the tractor. Reitzel testified the taxi's brakes were not applied and there were no skid marks, but also confirmed, that the light was green in favor of the taxi. Reitzel said he exited his van, went to check on the occupants of the taxi, saw that smoke was billowing from the airbags, the driver was breathing but unconscious, that the back seat passenger was injured by conscious, and went back to his van. He left the scene before the police arrived as he did not want to miss his flight. The driver of the van, a tenant in his house, returned to the scene to give a written statement. Reitzel was interviewed at his house several months later when an investigator appeared to speak to the tenant who at the time was not home.

An eyewitness, Debra Marcus, was in a vehicle headed southbound on Lincoln Avenue and was stopped and waiting for the red traffic signal to change. She testified that she saw the 18-wheel truck in the turning lane on the eastbound side of Vets Highway. According to her, when she first saw the 18-wheeler it was inching forward very slowly into the subject intersection. She then saw the taxi traveling westbound in the left thru lane on Vets Highway at a steady speed of about 55 miles per hour or more, and not slowing down. Marcus testified that the taxi went full force into the truck; she did not hear any screeching. When the light turned green in her favor, she proceeded around the collision southbound on Lincoln Avenue. After stopping to call her husband, a few minutes later she returned to the scene and completed the accident report.

Another eyewitness who was walking south on the eastbound side of Vets Highway waiting to cross Lincoln Avenue, Demetrios Rodriguez, testified that he heard screeching tires which made him look up in the direction of the sound. Rodriguez testified that he could tell that the taxi was going at an excessive speed, which he estimated at "over 50 miles per hour...65, 70 tops." He heard the driver slam on the brakes twice, the car skidded, and then saw the taxi hit the side of the truck. He also testified that he saw another car to the right of the taxi that slowed down and stopped, but the taxi went around or passed it and collided with the 18-wheeler.

Based on the deposition testimony of the aforementioned parties, plaintiffs demonstrated their *prima facie* entitlement to judgment as a matter of law on the issue of liability against Espinal and New Penn by establishing that Espinal violated VTL § 1141 when he made a left turn directly into the path of the taxi driven by Gibbons (see **Anzel v Pistorino**, 105 AD3d 784, 962 NYS2d 700 [2d Dept 2013]; **Medina v Rodriguez**, 92 AD3d 850, 939 NYS2d 514 [2d Dept 2012]). VTL § 1141 requires the driver of a vehicle intending to turn left to "yield the right of way to any vehicle approaching from the opposite direction which is ... so close as to constitute an immediate hazard" (VTL § 1141; **Reyes v Marchese**, 96 AD3d 926, 946 NYS2d 500 [2d Dept 2012]). As Gibbons had the right of way, he was entitled to anticipate that Espinal would obey the traffic laws requiring him to yield (see **Simmons v Canady**, 95

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AD3d 1201, 945 NYS2d 138 [2d Dept 2012]; *Colandrea v Choku*, 94 AD3d 1034, 943 NYS2d 166 [2d Dept 2012]; *Ahern v Lanaia*, 85 AD3d 696, 924 NYS2d 802 [2d Dept 2011]). Therefore, the motion by the plaintiffs for summary judgment in their favor on the issue of liability is granted only as to defendants Espinal and New Penn.

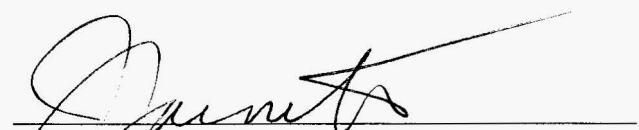
Nevertheless, there can be more than one proximate cause of an accident (*Adobea v Junel*, ___ AD3d ___, 2014 WL 623626; 2014 NY Slip Op 01143 [2d Dept 2014]; *Pollack v Margolin*, 84 AD3d 1341, 924 NYS2d 282 [2d Dept 2011]). A driver who lawfully enters an intersection, could still be found partially at fault for failing to use reasonable care to avoid a collision with another vehicle in the intersection (*Adobea v Junel*, *supra*; *Simmons v Canady*, *supra*; *Cox v Weil*, 66 AD3d 634, 634–635, 887 NYS2d 170 [2d Dept 2009]). However, “a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*Ducie v Ippolito*, 95 AD3d 1067, 1067-1068, 944 NYS2d 275 [2d Dept 2012]; *Yelder v Walters*, 64 AD3d 762, 764, 883 NYS2d 290 [2d Dept 2009]; *see also Adobea v Junel*, *supra*).

Here, although the testimony of the nonparty eyewitnesses conflicts with each other as well as with that of the parties as to whether Gibbons was speeding or applied his brakes, there is no dispute that the tractor portion of Espinal’s 18-wheeler had already started to enter the intersection when Gibbons was approaching Lincoln Avenue, and that the taxi hit the side of the tractor. There is also no dispute that the Bartolino vehicle and the Reitzel vehicle, which were in close proximity to the taxi, were brought to a stop and avoided colliding with the 18-wheeler. Moreover, as mentioned above, at the scene of the accident as set forth in the certified police accident report, and again during his deposition, Espinal stated that he attempted to make the left turn because he saw the left directional signal on the taxi illuminated and the taxi maneuver in the left turn lane of Vets Highway.

Considering all of this evidence, and viewing it in a light most favorable to Espinal and New Penn as the non-moving parties, an issue of fact has been raised as to whether Gibbons may have been comparatively negligent for the happening of the accident (*see Jones v Vialva-Duke*, 106 AD3d 1052, 966 NYS2d 187 [2d Dept 2013]; *Gray v Dembeck*, 48 AD3d 478, 853 NYS2d 155 [2d Dept 2008]; *Romano v 202 Corp.*, 305 AD2d 576, 759 NYS2d 365 [2d Dept 2003]; *see also Nevarez v S.R.M. Mgt. Corp.*, 58 AD3d 295, 867 NYS2d 431 [1st Dept 2008]; *Boston v Dunham* 274 AD2d 708, 711 NYS2d 54 [3d Dept 2000]). Therefore, Gibbons and Village Taxi are not entitled to summary dismissal of the complaint and cross claims (*see Simmons v Canady*, *supra*; *Pollack v Margolin*, *supra*).

Accordingly, the motion by the plaintiffs for summary judgment is granted in their favor on the issue of liability only as to defendants Espinal and New Penn, and the cross motion for summary judgment is denied.

Dated: March 12, 2014


 Hon. Joseph Farneti
 Acting Justice Supreme Court

___ FINAL DISPOSITION X NON-FINAL DISPOSITION