

Antonelli v Loritz

2018 NY Slip Op 34152(U)

November 2, 2018

Supreme Court, Orange County

Docket Number: Index No. EF005349-2018

Judge: Catherine M. Bartlett

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
JOHN ANTONELLI, JR.,

Plaintiff,

-against-

PETER J. LORITZ,

Defendants.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF005349-2018
Motion Date: October 31, 2018

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The following papers numbered 1 to 3 were read on Plaintiff's unopposed motion for partial summary judgment on the issue of liability:

Notice of Motion - Affirmation /Exhibits - Affidavit 1-3

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

This is a personal injury action stemming from a two-car accident which occurred on November 8, 2017 on Tuckers Corners Road in the Town of Plattekill, New York. Plaintiff John Antonelli, Jr. was operating a vehicle traveling westbound on Tuckers Corners Road. Defendant Peter J. Loritz was operating a vehicle traveling eastbound when he crossed over a double yellow line into the westbound lane of traffic and collided with Plaintiff's vehicle. Plaintiff now moves for partial summary judgment on the issue of liability.

By violating Vehicle and Traffic Law §1120(a), which provides that “vehicle[s] shall be driven upon the right half of the roadway,” Mr. Loritz was negligent *per se* unless justified by an emergency situation not of the driver’s own making. *See, Foster v. Sanchez*, 17 AD3d 312, 313 (2d Dept 2005); *Marsicano v. Dealer Stor. Corp.*, 8 AD3d 451, 452 (2d Dept 2004); *Gadon v. Oliva*, 294 AD2d 397, 397–398 (2d Dept 2002). *See also, Caffery v. BJY Materials, Inc.*, 11 AD3d 649 (2d Dept. 2004); *Arrowitz v. Arrowitz*, 279 AD2d 440 (2d Dept. 2001). Moreover, “[a] driver is not obligated to anticipate that a vehicle traveling in the opposite direction will cross over into the oncoming lane of traffic.” *Marsch v. Catanzaro*, 40 AD3d 941, 942 (2d Dept. 2007).

Thus, Plaintiff established his *prima facie* entitlement to judgment as a matter of law by submitting evidence showing that Defendant crossed over a double yellow line into the opposing lane of traffic, thereby causing the collision. *See, Snemyr v. Morales-Aparicio*, 47 AD3d 702 (2d Dept 2008); *Marsicano v. Dealer Stor. Corp.*, *supra*, 8 AD3d at 452; *Browne v. Castillo*, 288 AD2d 415 (2d Dept 2001). Defendant, having failed to come forward with any nonnegligent explanation for the collision, has failed to rebut the inference of negligence arising from his crossing over into Plaintiff’s lane of travel. *See, Caffery v. BJY Materials, Inc.*, *supra*; *Arrowitz v. Arrowitz*, *supra*. Moreover, since Defendant also failed to adduce any evidence of negligence on Plaintiff’s part, the Court concludes as a matter of law that Defendant’s negligence in crossing over into Plaintiff’s lane of travel was the sole proximate cause of accident. *See, Marsch v. Catanzaro*, *supra*; *Caffery v. BJY Materials, Inc.*, *supra*.

It is therefore

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of defendant Peter J. Loritz's liability for the subject motor vehicle accident is granted.

The foregoing constitutes the decision and order of this Court.

Dated: November 2, 2018
Goshen, New York

ENTER


HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE