

Sedeski v Malek

2019 NY Slip Op 32599(U)

September 3, 2019

Supreme Court, New York County

Docket Number: 150907/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA

PART IAS MOTION 22

Justice

-----X

INDEX NO. 150907/2017

JOSEPH SEDESKI, DONNA SEDESKI,
Plaintiff,

MOTION DATE 04/19/2019

MOTION SEQ. NO. 003 & 004

- v -

ROBERT MALEK,
Defendant.

**DECISION + ORDER ON
MOTION**

-----X

ROBERT MALEK
Plaintiff,

Third-Party
Index No. 595156/2017

-against-

JAY CHEPANONIS
Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 66, 68, 71

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Before the Court is third-party defendant Jay Chepanonis' motion sequence 003 for an Order granting summary judgment on the issue of liability to said third-party defendant and to dismiss the third-party complaint against him and plaintiffs Joseph and Donna Sedeski's motion sequence 004 for an Order granting summary judgment on the issue of liability in their favor as against defendant Robert Malek.

This action stems from a motor vehicle incident which occurred on July 15, 2016, southbound on State Route 42 in the Town of Fallsburg, County of Sullivan, State of New York, when a vehicle operated by defendant Robert Malek made a k-turn and struck third-party defendant Jay A. Chepanonis vehicle which led to plaintiff's injuries.

Plaintiffs' motion and third-party defendant's motion, both on the issue of liability, are granted. Plaintiffs' motion adopts the arguments and exhibits of those contained in the motion of third-party defendant Chepanonis, which alleges that defendant Malek was negligent in causing the accident when defendant's vehicle attempted to make a k-turn, crossed a double yellow line without any signal, and struck the vehicle operated by third-party defendant and transporting plaintiff. Third-party defendant and plaintiff have made a prima facie case of negligence, and the burden shifts to defendant to raise a triable issue of fact (*See Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]; *see also Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Violation of the Vehicle and Traffic Law ("VTL") constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep't 2009]). VTL 1163(a) states that

"[n]o person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Section 1160 . . . or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless or until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal."

Pursuant to Vehicle and Traffic Law 1130(1):

"[w]henver any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical

barrier or dividing section or space or at a crossover or intersection, as established, unless specifically authorized by public authority.”

Summary Judgment in favor of the plaintiff is warranted where the defendant’s own conduct inculcates him (*Uragrizza v Schmieder*, 46 NY2d 471 [1979]). “It is well settled that the right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles” (*Garcia v Tri-County Ambulette Serv.*, 282 AD2d 206, 207 [1st Dept 2001] citing *Johnson v Phillips*, 261 AD2d 269, 272 [1st Dept 1990]). Here, plaintiff was passenger of a vehicle that was struck by defendant’s motor vehicle. Third-party defendant has testified that he had mere seconds to attempt to avoid an accident with defendant Malek’s vehicle. Defendant Malek testified that he was attempting to make a k-turn and crossed over the double yellow line. Thus, third-party defendant has demonstrated that defendant Malek violated the VTL and has made a prima facie showing of entitlement to summary judgment on this issue of liability as against Defendant Malek.

In opposition defendant fails to raise an issue of fact or provide a non-negligent explanation for the collision. Thus, third-party defendant’s motion for an Order granting summary judgment on the issue of liability in favor of third-party defendant Jay A. Chepanonis and against defendant Robert Malek and to dismiss third-party plaintiff Malek’s third-party complaint is granted. For the same reasons mentioned above, plaintiffs’ motion for an Order granting summary judgment on the issue of liability as against defendant Robert Malek is granted.

Accordingly, it is

ORDERED that plaintiffs' motion for summary judgment for a finding that plaintiffs are free from liability and that defendant Robert Malek is liable for the accident at issue is granted; and it is further

ORDERED that third-party defendant Jay A. Chepanonis' motion for an order dismissing third-party plaintiff Robert Malek's third-party Complaint is granted; and it is further

ORDERED that the third-party complaint is dismissed in its entirety as against third-party defendant Jay A. Chepanonis, with costs and disbursements to said third-party defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said third-party defendant; and it is further


ORDERED that the action is severed and continued against the remaining defendant Robert Malek; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that within 20 days of entry, counsel for plaintiffs shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

9/3/19
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE