

**Marks v Rieckhoff**

2019 NY Slip Op 33911(U)

December 9, 2019

Supreme Court, Suffolk County

Docket Number: 607652/2016

Judge: John H. Rouse

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This opinion is uncorrected and not selected for official publication.

Suffolk County Index No. 607652/2016  
Suffolk County Index No. 608790/2019  
Queens County Index No. 708407/2019

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 12 - SUFFOLK COUNTY

**PRESENT:**

Hon. John H. Rouse  
Acting Supreme Court Justice

MOTION DATE: 10/18/2019  
ADJ. DATE: 10/23/2019  
Mot. Seq. 003-MG

MOTION DATE: 10/18/2019  
ADJ. DATE: 10/23/2019  
Mot. Seq. 004-MG  
*e-filed full participation*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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Paula Marks and Mitchell Marks,  
Plaintiffs

-against-

Daniel R Rieckhoff, Gordon Rieckhoff, and Watch  
Command, Inc.  
Defendants

**COUNTY CLERK  
DIRECTIVES**

Suffolk County Index No.  
607652/2016

Action # 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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Jose Galdamez,  
Plaintiff

-against-

Daniel Rieckhoff,  
Defendant

**DECISION & ORDER**

Suffolk County Index No.  
608790/2019

Action #2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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Keith J. Lehr,

Plaintiff

Queens County Index No.

708407/2019

-against-

Action #3

Daniel R. Rieckhoff, Watch Command Inc., and  
Mitchell Marks,

Defendants

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**TO:**

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Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by Plaintiffs for an Order granting the plaintiffs' motion in its entirety by issuing an Order pursuant to CPLR §602 consolidating three actions for the purpose of joint trial, and set these matters down for a simultaneous conference for discovery to be scheduled and for such other relief as this Court may deem just and proper; (2) Notice of Cross Motion by Defendants Gordon Rieckhoff and Watch Command, Inc. for an Order pursuant to CPLR §602 consolidating three actions for the purpose of joint trial, and setting these matters down for a simultaneous conference for discovery to be scheduled and for such other and further relief as this Court may deem just and proper; (3) *e-filed documents 1-70* under Suffolk County Index No. 607652/2016;

(4) *e-filed documents 1-5* under Suffolk County Index No. 608790/2019; and (5) *e-filed documents 1-8* under Queens County Index No. 708407/2019; it is:

**ORDERED** that the Plaintiffs Paula Marks and Mitchell Marks are directed to file a Request for Judicial Intervention with the Queens County Clerk for the Action pending in Supreme Court under Queens County Index No. 708407/2019; and it is further

**ORDERED** that the Plaintiffs Paula Marks and Mitchell Marks are directed to file a Request for Judicial Intervention with the Suffolk County Clerk for the Action pending in Supreme Court under Suffolk County Index No. 608790/2019; and it is further

**ORDERED** that the motion (Seq. #003) by Plaintiff Paula Marks and Mitchell Marks and cross motion (Seq. 004) by Defendants Gordon Rieckhoff and Watch Command, Inc. for consolidation is granted to the extent provided in the orders below; and it is further

**ORDERED that the Court Clerk is directed to schedule this case for a compliance conference at 10:30 o'clock in the forenoon on Wednesday, January 8, 2020** and the parties are to appear prepared to enter into a revised preliminary conference order, and the parties: Paula Marks, Mitchell Marks, Jose Galdamez, and Daniel R. Rieckhoff are to be present in court or immediately available by telephone so that a date(s) certain for examinations before trial can be set as to the issue of liability, such examination before trial may thereafter proceed to the issue of damages but the examination before trial on the issue liability will not be deferred should required discovery on damages be incomplete at the time of such examination before trial on liability is conducted; and it is further

**ORDERED that the County Clerk for Queens County is directed to transfer the case pending in Supreme Court, Queens County under 708407/2019, Keith J. Lehr -against- Daniel R. Rieckhoff, Watch Command Inc., and Mitchell Marks, to the County Clerk for Suffolk County for consolidation with Action 1; and it is further**

**ORDERED** that the County Clerk for Suffolk County is directed to consolidate: Action 2 pending in Supreme Court, Suffolk County, under Suffolk County Index No. 608790/2019; Action 3 pending in Supreme Court, Queens County under 708407/2019 which is to be transferred to Suffolk; into Action 1 pending in Supreme Court under Suffolk County Index No. 607652/2016; and it is further

**ORDERED** that County Clerk for Suffolk County is directed to amend the caption of the consolidated action to be as follows:

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Paula Marks, Mitchell Marks, Jose Galdamez and Keith J. Lehr,

Plaintiffs

Suffolk County Index No.

-against-

607652/2016

Daniel R. Rieckhoff, Gordon Rieckhoff, Watch Command Inc., and  
Mitchell Marks,

Defendants

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and it is further

**ORDERED** that claims by Keith J. Lehr against Mitchell Marks shall be recast as cross claims in the consolidated action and any cross claims by Defendants Daniel R. Rieckhoff, Watch Command Inc. against Mitchell Marks in Action 3 shall be recast as counterclaims in the consolidated action; and it is further

**ORDERED** that Plaintiffs Paula Marks and Mitchell Marks are hereby authorized to file notes of issue and certificates of readiness for a bifurcated trial for their respective trials on the issue of damages only regardless of whether discovery on the issue of liability is complete; and it is further

**ORDERED** that the damages trials for Plaintiffs Paula Marks and Mitchell Marks may, in the discretion of the judge in the Trial Assignment Part, proceed prior to the trial on the issue on liability *if* their note(s) of issue and certificate(s) of readiness for a trial on damages is filed before a note of issue and certificate of readiness is filed for a trial on the issue of liability; and it is further

**ORDERED** that all parties are authorized to to file a note of issue and certificate of readiness for a trial on the issue of liability once discovery on liability is complete regardless of whether discovery on the issue of their respective claims for damages is concluded; and it is further

**ORDERED that all motions for summary judgment on the issue of liability must be filed within 45 days of the filing of the note of issue on the issue of liability;** and it is further

**ORDERED that all motions for summary judgment on the issue of whether Plaintiffs Paula Marks and on the issue of whether Mitchell Marks sustained a serious injury must be filed within 45 fays of the filing of the respective note of issue for such Plaintiff's claims for damages;** and it is further

**ORDERED** Plaintiffs Paula and Marks Mitchell Marks are directed to serve upon the Suffolk County Clerk notice of this order as provided by CPLR § 8019(c);

See <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

and it is further

**ORDERED** Plaintiffs Paula and Marks Mitchell Marks are directed to serve upon the Queens County Clerk notice of this order as provided by CPLR § 8019(c);

See <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

and it is further

**ORDERED** that movants and cross movants are directed to serve a copy of this decision and order together with notice of entry on all other parties to the three actions, *See Protocol for Electronic Filing in Suffolk County Supreme Court at II (M) page 6 for rules on serving notice of entry.* <https://www.nycourts.gov/courts/10jd/suffolk/EFiling/>

and it is further

**ORDERED** that all parties are directed to familiarize themselves with the rules of this Part:

[https://www.nycourts.gov/LegacyPDFS/Courts/10jd/suffolk/SC\\_Part\\_Rules/Rouse.pdf](https://www.nycourts.gov/LegacyPDFS/Courts/10jd/suffolk/SC_Part_Rules/Rouse.pdf)

## DECISION

### Consolidation

Plaintiffs Paula Marks and Mitchell Marks commenced an action (Action 1) on May 17, 2016 to recover for the serious injuries each allege they sustained in a multiple vehicle collision on Friday, May 13, 2016 at 3:45 p.m. in the westbound lane of the Long Island Expressway when Daniel R. Rieckhoff, who during the course of his employment with Watch Command Inc., driving a Jeep Wrangler owned by Gordon Rieckhoff entered the High Occupancy Vehicle (HOV) Lane and struck the car driven by Mitchell Marks.

Defendant Daniel R. Rieckhoff contends he was cutoff by a vehicle entering his lane, he was left with little or no time for thought, deliberation or consideration and he has raised the affirmative defense that he was presented with an emergency, and that under the circumstances he reasonably and prudently entered the HOV lane. *See e.g. Jacobellis v. New York State Thruway Auth., 51 A.D.3d 976 (2nd Dept. 2008).* This followed with a collision with vehicles operated by Keith J. Lehr (Action 2), who accordingly to the police report was taken from the scene to the hospital; Christopher J. Berry; and Jose Galdamez (Action 3) who accordingly to the police report was *not* taken from the scene to the hospital. The motion and cross motions are unopposed and are granted as provided in the orders above.

Bifurcation of Discovery and Trial on Issues of Damages and Liability

Upon this consolidated action special consideration should be granted to Plaintiffs in Action 1 who commenced their action three years ago whereas the Plaintiffs in Action 2 and 3 commenced their actions just this year immediately before the statute of limitations expired. Further, Paula Marks as a passenger is free from all claims of negligence and free from fault; all liability claims rest with the Defendants, jointly and severally. *See Shaw v Carolina Coach, 82 A.D.3d 98 (2nd Dept.)* It is appropriate that the claims by Paula Marks and Mitchell Marks not be unduly delayed by the late filing Plaintiffs.

The facts in common in these actions pertain to liability only. Discovery as to liability should take precedence over discovery on the issue of damages claimed by the late filing Plaintiffs Jose Galdamez and Keith J. Lehr. This does not mean discovery on both issues cannot proceed concurrently, only that discovery on damages as to Galdamez and Lehr should not delay or hinder discovery on the issue of liability that affects all parties. Further, insofar as the trial will be bifurcated as to claims for liability and damages, 22 NYCRR 202.42, the Plaintiffs Paula Marks and Mitchell Marks are authorized to file a note of issue and certificate of readiness for a determination of damages once all discovery on their damage claims is complete regardless of whether discovery on the issue of liability is concluded as provided in the orders above.

The foregoing shall constitute the decision and order of the court.

Dated: December 9, 2019

  
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JOHN H. ROUSE, Acting J.S.C.

NON-FINAL DISPOSITION