

**Brulatour v Cooney**

2020 NY Slip Op 34624(U)

April 16, 2020

Supreme Court, Orange County

Docket Number: Index No. EF000604-2017

Judge: Catherine M. Bartlett

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

JENNIFER BRULATOUR, as Administrator of  
the Estate of KEITH BRULATOUR,

Plaintiff,

-against-

BRENNA COONEY and MICHAEL COONEY,

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. EF000604-2017  
Motion Date: January 30, 2020

The following papers numbered 1 to 5 were read on Defendants' motion for summary  
judgment:

Notice of Motion - Affirmation / Exhibits - Expert Affidavit .....	1-3
Affirmation in Opposition .....	4
Reply Affirmation .....	5

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

This is an action to recover for personal injuries arising out of a cross-over motor vehicle  
accident. Plaintiff's decedent, Keith Brulatour, testified that a vehicle operated by defendant  
Brenna Cooney crossed over into his lane of traffic and struck his vehicle head on before he had  
any opportunity to take evasive action. Her son, Matthew Brulatour, avers that he was driving

two cars behind his father, that another vehicle crossed over and the ensuing collision occurred entirely in his father's lane.

Defendant Brenna Cooney testified that Mr. Brulatour's vehicle crossed over into her lane of traffic, struck her vehicle head on and flipped over the hood of her vehicle. An independent third party witness who was driving directly behind Mr. Brulatour confirmed that the accident occurred when Mr. Brulatour crossed over into Ms. Cooney's lane. Skid marks and gouge marks in the road, as well as broken glass, were all located in Ms. Cooney's lane of traffic, and both vehicles ended up on her side of the roadway. Defendants' accident reconstruction expert averred, based *inter alia* on the aforesaid physical evidence as well as the nature of the damage to the two vehicles that the accident occurred when Mr. Brulatour veered left into Ms. Cooney's lane, and could not, consistent with the physical evidence, have occurred as the Brulatours maintain by Ms. Cooney's having veered to her left into Mr. Brulatour's lane. Plaintiff has submitted no expert accident reconstruction evidence in opposition.

Testimony may be deemed incredible as a matter of law and "disregarded as being without evidentiary value" if it is "impossible of belief because it [was] manifestly untrue, physically impossible, contrary to experience, or self-contradictory." *See, Loughlin v. City of New York*, 186 AD2d 176, 177 (2d Dept. 1992), *lv. denied* 81 NY2d 704 (1993); *Zapata v. Buitriago*, 107 AD3d 977, 979 (2d Dept. 2013); *People v. Garofalo*, 44 AD2d 86, 88 (2d Dept. 1974). *See also, Castro v. Hatim*, 174 AD3d 464, 465-466 (1<sup>st</sup> Dept. 2019); *Pryce v. City of New York*, 172 AD3d 625, 629 (1<sup>st</sup> Dept. 2019).

Here, defendant Brenna Cooney's account of the accident was confirmed by an independent third party witness traveling directly behind Mr. Brulatour. It is, moreover,

substantiated by all of the physical evidence as interpreted by her accident reconstruction expert.

In contrast, the Brulatours' evidence is wholly self-serving, contradicted by the independent witness to the accident, and contrary to all of the physical evidence, as Plaintiff has tacitly admitted by failing to adduce any evidence in opposition to the affidavit proffered by the defense accident reconstruction expert. Under the circumstances, the Court concludes that the decedent's deposition testimony as well as his son's affidavit are incredible as a matter of law and to be disregarded as without evidentiary value because their account of the accident is physically impossible in light of the physical evidence, and manifestly untrue.

The Court accordingly finds as a matter of law that Plaintiff's decedent, and not defendant Brenna Cooney, violated Vehicle and Traffic Law §1120(a) (which provides that "vehicle[s] shall be driven upon the right half of the roadway") by crossing over into the opposing lane of traffic. Inasmuch as (1) Mr. Brulatour 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]), and (2) Ms. Cooney was 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]), the Court concludes as a matter of law that Mr. Brulatour's negligence in crossing over into Ms. Cooney's lane of travel was the sole proximate cause of accident.

It is therefore

ORDERED, that Defendants' motion for summary judgment is granted, Plaintiff's cross motion for partial summary judgment on the issue of threshold injury is denied as moot, and the Plaintiff's complaint is dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: April 16, 2020      ENTER  
Goshen, New York

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