

<b>Beckman v Emsworth</b>
2021 NY Slip Op 33340(U)
February 11, 2021
Supreme Court, Orange County
Docket Number: Index No. EF003542-2019
Judge: Maria S. Vazquez-Doles
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At a term of the IAS Part of the Supreme Court of the State of New York,  
held in and for the County of Orange, at 285 Main Street,  
Goshen, New York 10924 on the 11th day of February, 2021.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

\_\_\_\_\_  
CHARLES BECKMAN,

Plaintiff,

-against-

KEVIN B. EMSWORTH,

Defendant.

\_\_\_\_\_  
VAZQUEZ-DOLES, J.S.C.

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

**DECISION & ORDER**  
INDEX EF003542-2019  
Motion date: 11/18/2020  
Motion Seq. #2

The following papers numbered 1 - 10 were read on plaintiff's motion for summary judgment against defendant on the issue of liability:

Notice of Motion/Affirmation (Delancey)/Exhibits 1-7/Affidavit of Service..... 1-10

Plaintiff's motion for summary judgment on the issue of liability is **GRANTED**.

**Background and Procedural History**

Plaintiff commenced this action by filing a Summons and Verified Complaint on May 1, 2019 (Exhibit 1 to moving papers). Defendant filed a Verified Answer with Affirmative Defenses on June 5, 2019 (Exhibit 2). On August 27, 2020, this Court granted plaintiff's motion to preclude defendant's testimony at trial for his failure to appear to three scheduled depositions (Exhibit 7). Defendant has failed to file opposition to the instant motion.

In this negligence action, plaintiff seeks to recover damages for personal injuries he claims to have sustained as a result of a motor vehicle accident that occurred on November 11, 2016. Plaintiff was allegedly traveling in the westbound lane of Waterstone Road in the Village of Greenwood Lake while defendant was traveling in the eastbound lane, both separated by a double yellow line, which defendant had crossed over, striking plaintiff's vehicle.

### Liability

Plaintiff asserts he is entitled to summary judgment on liability because defendant drove his vehicle across the double yellow line and into plaintiff's lane, constituting negligence per se (N.Y. Veh. & Traf. Law §1120(a), §1126(a) and 1128(a) [McKinney]). "Crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law §1126(a), constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making" (Snemyr v. Morales-Aparicio, 47 AD3d 702 [2d Dept 2008]). "A driver is not required to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic" (Eichenwald v. Chaudhry, 17 AD3d 403 [2d Dept 2005]).

Plaintiff submits his deposition, dated January 14, 2020, in which he stated, ". . . I was coming through I heard the sound of screeching tires like somebody lost control, so I put my foot on the brake because I couldn't see the car, but you could hear it and that's the last thing I remember was going bang and then I was driven back about 50 feet and I landed in front of a house about two feet away..." (Exhibit 5, p 21).

According to the police report: "Beckman stated that as he started coming around the curve (west) the white car was in his lane and hit him. Officer did observe tire scuff marks starting in the east bound lane near Kobbenbring Dr., cross into the west bound lane and continue to where there were scrape marks in the pavement of the west bound lane, which appeared to be the point of impact for the vehicles. From this point there were fluid trails leading to both vehicles . . ." Neil Ryan, the police officer who had drafted the report at the time of subject accident, testified to the following exchange:

Q. -- coming into the westbound lane . . . Did you see scuff marks going from the lane of Mr. Emsworth's vehicle crossing the lane of travel into Mr. Beckman's? Is that what that report states? A. Correct . . .

Q. Okay. So based on that statement, you believe the point of impact was actually in Mr. Beckman's lane of travel, correct? A. Correct. . .

Q. Who did you determine that fault to be on? A. Mr. Emsworth.

Q. And what made you come to that conclusion? A. The tire marks, the skid marks . . . (Exhibit 6, p 22-4).

Officer Ryan had indicated that "Mr. Emsworth told [him] that as he was coming around the curve, the Subaru being driven by Mr. Beckman was in Mr. Emsworth's lane of travel" (Id. at 22). However, defendant has failed to appear to his scheduled depositions or submit an opposition to the instant motion that would "demonstrate the existence of a triable issue of fact" as to whether he had "crossed the double yellow line or was confronted with an emergency situation not of his own making at the time of the accident" (Snemyr, 47 AD3d at 704). Upon view of the foregoing, plaintiff's motion for summary judgment on the issue of liability is granted.

### Conclusion

Accordingly, it is hereby

**ORDERED** that plaintiff's motion for summary judgment on the issue of liability is **GRANTED**, and

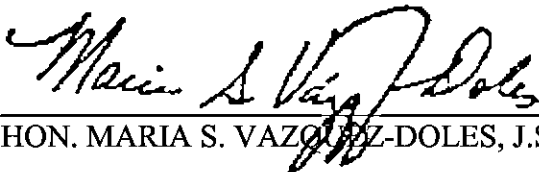
**ORDERED** that the remaining issues shall be limited to plaintiff's injuries and damages; and it is further,

**ORDERED** that a virtual conference shall be held in this matter before the undersigned on   May     19  , 2021. at 2:00 p.m.

The foregoing constitutes the Decision and Order of this Court.

Dated: February 11th , 2021  
Goshen, New York

E N T E R :

  
HON. MARIA S. VAZQUEZ-DOLES, J.S.C.