

Kim v White
2024 NY Slip Op 35035(U)
October 31, 2024
Supreme Court, Queens County
Docket Number: Index No. 724905/2020
Judge: Ulysses B. Leverett
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
JANE KIM,

Index No. 724905/2020
Motion Sequence No. 2

Plaintiff,

-against-

ORDER

LYDIA WHITE,

Defendant

-----X
LYDIA WHITE,

Third-Party Plaintiff,

-against-



YU KUN KIM,

Third-Party Defendant.

-----X

Upon the reading and filing of the following papers in this matter: Motion for Summary Judgment and its supporting papers filed by Third-Party Defendant, YU KUN KIM, pending under motion sequence # 2; the Cross Motion for Summary Judgment and its supporting papers filed by Plaintiff, JANE KIM, the Opposition papers of Defendant LYDIA WHITE, to the YU KUN KIM motion and JANE KIM cross motion, under motion sequence # 2, and all Reply papers,

NOW, upon due deliberation, completion of oral argument, and consideration by this Court of the foregoing papers, the motions are decided as follows:

This lawsuit for personal injuries arose out of a two (2) vehicle accident that happened on August 21, 2020, on Northern Boulevard, at the intersection with Crocheron Boulevard, in Queens County.

Plaintiff was a passenger in the Third-Party Defendant KIM vehicle, travelling westbound on Northern Boulevard. The Defendant WHITE vehicle was travelling in the oncoming eastbound direction on Northern Boulevard, when Defendant WHITE suddenly and unexpectedly made a left turn directly in front of the oncoming KIM vehicle, and the accident occurred.

A driver with the right of way, is entitled to anticipate that other motorists will obey traffic laws which require them to yield (*e.g.*, *Adobea v Junel*, 114 AD3d 818 [2d Dept 2014]; *Bullock v Calabretta*, 119 AD3d 884 [2d Dept 2014]; *Jordan v City of New York*, 12 AD 3d 326 [1st Dept 2004]).

Plaintiff, JANE KIM, testified that she was a passenger in her husband's Toyota Avalon; travelling westbound on Northern Boulevard, at the intersection of Crocheron Avenue, when they were struck by Defendant WHITE vehicle.

Defendant, LYDIA WHITE, testified she was operating her Acura TL eastbound on Northern Boulevard. Eastbound traffic was heavy, but westbound traffic was: "Light for some reason. That's why I made the turn." She entered the left turning lane and tried to make a left turn onto Crocheron Avenue, directly in front of the oncoming westbound KIM vehicle. She did not have any kind of turn signal arrow, and she never saw the KIM vehicle prior to the impact.

Pursuant to Vehicle and Traffic Law § 1141, the "driver of a vehicle intending to turn to the left within an intersection shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard" (*Katikireddy v Espinal*, 137 AD3d 866 [2d Dept 2016])

It is well settled that a vehicle is exclusively liable where it proximately causes a collision while making a left turn in front of opposing traffic (*e.g.*, *Marangoudakis v Suniar*, 2022 NY

Slip Op 05208 [2d Dept] [Denial of summary judgment was *reversed*]; *Nesbitt v Gallant*, 149 AD3d 763 [2d Dept 2017]; *Ismail v Burnbury*, 118 AD3d 756 [2d Dept 2014]; *Kann v Maggie Paratransit Corp.*, 63 AD3d 792 [2d Dept 2009]).

In *Sapienza v Harrison*, 2021 NY Slip Op 08210 (2d Dept), the Court held:

“Pursuant to Vehicle and Traffic Law § 1141, “[t]he operator of a vehicle intending to turn to the left within an intersection must yield the right-of-way to any oncoming vehicle that is within the intersection or so close to it as to constitute an immediate hazard” (*Ming-Fai Jon v Wager*, 165 AD3d 1253, 1253-1254). “A violation of this statute constitutes negligence per se” (*id.* at 1254; *see Vainer v DiSalvo*, 79 AD3d 1023, 1024). “The operator of an oncoming vehicle with the right-of-way is entitled to assume that the opposing operator will yield in compliance with the Vehicle and Traffic Law” (*Attl v Spetler*, 137 AD3d 1176, 1176). “Although a driver with a right-of-way also has a duty to use reasonable care to avoid a collision, . . . a driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*Yelder v Walters*, 64 AD3d 762, 764 [citations omitted]; *see Attl v Spetler*, 137 AD3d at 1176).”

In *Ming-Fai Jon v Wager*, 165 AD3d 1253 (2d Dept 2018), the plaintiff was travelling straight through an intersection when the defendants made a left in front of him (*Id.* at 83). The Court noted that regardless of who entered the intersection first, the plaintiff had the right-of-way, and was entitled to anticipate that the defendant would obey traffic laws which required her to yield. *See also Jung v Glover*, 169 AD3d 782 (2d Dept 2019); *Giannone v Urdahl*, 165 AD3d 1062 (2d Dept 2018); *Foley v Santucci*, 135 AD3d 813 (2d Dept 2016).

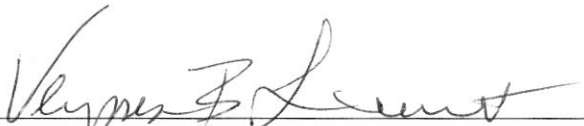
It constitutes *negligence per se* and summary judgment may properly be granted when the driver of a motor vehicle makes a left turn directly into the path of another vehicle as it legally proceeded with the right of way (*e.g. Mel-Hua Gao v Makrinos*, 147 AD3d 747 [2d Dept 2017]; *Simeone v Cianciolo*, 118 AD3d 864 [2d Dept 2014]; *see also Foley v Santucci*, 135 AD3d 813 [2d Dept 2016]; *Krajiniak v Jin Y Trading, Inc.*, 114 AD3d 910 [2d Dept 2014]).

The Court finds movants have made their *prima facie* case of establishing their lack of liability. Plaintiff was an innocent passenger, and Third-Party Defendant was travelling with the right of way, when the Defendant WHITE attempted to make a left turn in violation of Vehicle and Traffic Law § 1141.

ORDERED that the motion of the Third-Party Defendant, YU KUN KIM, for an Order, pursuant to CPLR § 3212(a) granting summary judgment, based upon Vehicle and Traffic Law § 1141, and that the defendant/third-party plaintiff did not establish a showing for comparative negligence, on the part of the third-party defendant, is hereby granted, and the Third-Party Complaint is now dismissed with prejudice in its entirety; and it is

ORDERED that the cross motion of the Plaintiff, JANE KIM, for an Order, pursuant to CPLR § 3212(a) granting summary judgment to the Plaintiff, on the issue of liability, is granted to the extent that all affirmative defenses and comparative liability of the innocent passenger Plaintiff are dismissed in its entirety.

Dated: 10/31/2024


Hon. Ulysses B. Leverett, J.S.C.

HON. ULYSSES B. LEVERETT

