

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D17509
W/kmg

_____AD3d_____

Argued - December 7, 2007

STEVEN W. FISHER, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
JOSEPH COVELLO, JJ.

2006-09835

DECISION & ORDER

Rockland Coaches, Inc., respondent, v
Town of Clarkstown, et al., appellants.
(Action No. 1)

Town of Clarkstown, appellant, v
Rockland Coaches, Inc. et al., respondents.
(Action No. 2)

(Index Nos. 2926/04, 4980/05)

MacCartney, MacCartney, Kerrigan & MacCartney, Nyack, N.Y. (Harold Y. MacCartney, Jr., of counsel), for appellants.

Carfora, Klar, Gallo, Vitucci, Pinter & Cogan, LLP, New York, N.Y. (Yolanda L. Ayala and Kevin F. Pinter of counsel), for respondents.

In two related actions to recover damages for injury to property that were joined for trial, the Town of Clarkstown, a defendant in Action No. 1 and the plaintiff in Action No. 2, and Steven Maneri, a defendant in Action No. 1, appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Rockland County (Liebowitz, J.), entered September 21, 2006, as, upon a jury verdict finding Steven Maneri 85% at fault in the happening of the accident and Edmond S. Glover, a defendant in Action No. 2, 15% at fault in the happening of the accident, upon the denial of their motion pursuant to CPLR 4404(a) to set aside the verdict and for judgment as a matter of law in Action No. 1, or alternatively, to set aside the verdict as against the weight of the evidence and for a new trial in Action No. 1, and upon so much of a stipulation as fixed the amount of damages sustained by Rockland Coaches, Inc., the plaintiff in Action No.1 and a defendant in Action No. 2, as a result of the subject accident in the sum of \$56,454.25, is in favor of Rockland Coaches, Inc.,

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and against the Town of Clarkstown in the principal sum of \$47,986.11 in Action No. 1.

ORDERED that the appeal by Steven Maneri is dismissed, as he is not aggrieved by the judgment appealed from (*see* CPLR 5511); and it is further,

ORDERED that the judgment is reversed insofar as appealed from by the Town of Clarkstown, on the law, that branch of the motion of the Town of Clarkstown which was to set aside the verdict and for judgment as a matter of law in Action No. 1 is granted, and the complaint in Action No. 1 is dismissed insofar as asserted against the Town of Clarkstown; and it is further,

ORDERED that one bill of costs is awarded to the Town of Clarkstown, payable by Rockland Coaches, Inc.

On January 18, 2004, Steven Maneri was operating a snowplow owned by the Town of Clarkstown. It was snowing heavily and Maneri was traveling on New York State Route 59 (hereinafter Route 59) at a speed of 20 miles per hour under the posted speed limit with his emergency flashers illuminated. As he approached the intersection of Route 59 and Crosfield Avenue, a Town street he was required to plow, he slowed to a speed of five miles per hour and was beginning to make a right-hand turn, when he collided with a bus owned by Rockland Coaches, Inc. (hereinafter Rockland Coaches), and operated by Edmond S. Glover. The bus and the snowplow were both damaged.

Rockland Coaches commenced Action No. 1 against Maneri and the Town to recover damages for injury to its property. The Town, in turn, commenced Action No. 2 against Glover and Rockland Coaches to recover damages for injury to its property.

The actions were joined for trial. At the conclusion of the trial, the jury found that Maneri acted recklessly, and that Glover acted negligently. The jury also found that Maneri's recklessness and Glover's negligence were proximate causes of the accident. The jury then apportioned 85% of fault to Maneri, and 15% of fault to Glover.

Asserting that the evidence did not establish that Maneri acted in "reckless disregard for the safety of others," the Town unsuccessfully moved, inter alia, pursuant to CPLR 4404 (a) to set aside the verdict and for judgment as a matter of law in Action No. 1. Judgment was thereafter entered only against the Town. We agree with the Town that the Supreme Court should have granted that branch of its motion which was pursuant to CPLR 4404(a) to set aside the verdict and for judgment as a matter of law in Action No. 1.

A snowplow operator engaged in work on a highway is exempt from the "rules of the road" and may be held liable only for damages caused by an act done "in reckless disregard for the safety of others" (Vehicle and Traffic Law § 1103[b]), that is, "in conscious disregard of 'a known or obvious risk that was so great as to make it highly probable that harm would follow'" (*Bliss v State of New York*, 95 NY2d 911, 913, quoting *Saarinen v Kerr*, 84 NY2d 494, 501; *see Primeau v Town of Amherst*, 5 NY3d 844, 845; *Riley v County of Broome*, 95 NY2d 455). However, even when

viewing the evidence in the light most favorable to Rockland Coaches and Glover, and drawing every reasonable inference in their favor, there is no valid line of reasoning from which the jury could have rationally concluded that Maneri acted with reckless disregard for the safety of others (*see Cohen v Hallmark Cards, Inc.*, 45 NY2d 493, 499). According to his testimony, Maneri looked in his side mirrors as he approached the intersection, but did not look in them immediately before turning. He either failed to see the bus, or believed that the bus was far enough behind him that he could safely make the turn. He then moved into the left U-turn lane to make the wide turn, and made a right turn into the approaching bus. Reckless disregard, however, requires more than a momentary lapse in judgment (*see Saarinen v Kerr*, 84 NY2d at 502). Consequently, the evidence was insufficient to support the verdict finding Maneri at fault for operating a snowplow recklessly within the meaning of Vehicle and Traffic Law § 1103(b) (*see Primeau v Town of Amherst*, 17 AD3d 1003, *aff'd* 5 NY3d 844; *see also Ferreri v Town of Penfield*, 34 AD3d 1243).

In light of our determination, we need not reach the Town's remaining contentions, which relate solely to Action No. 1.

FISHER, J.P., LIFSON, SANTUCCI and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court