

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

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_____AD3d_____

Argued - February 14, 2008

STEVEN W. FISHER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2007-02607

DECISION & ORDER

Clifton Campbell, Jr., plaintiff, v City of New York,
et al., defendants, Mediaone of New York, Inc.,
f/k/a Mediaone of Greater New York, Inc., n/k/a
Comcast of Boston, Inc., defendant third-party
plaintiff-respondent; John Caulfield Fiber Optic
Services, Inc., third-party defendant, Global
Rental Co., Inc., third-party defendant-appellant.

(Index No. 687/01)

Churbuck Calabria Jones & Materazo, P.C., Hicksville, N.Y. (George Jones of
counsel), for third-party defendant-appellant.

Hodges Walsh & Slater LLP, White Plains, N.Y. (Lisa M. Rolle of counsel), for
defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, the third-party defendant Global
Rental Co., Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court,
Putnam County (O'Rourke, J.), dated January 30, 2007, as, upon renewal and reargument, adhered
to its prior determination in an order dated November 30, 2006, denying that branch of the motion
of the third-party defendants, John Caulfield Fiber Optic Services, Inc., and Global Rental Co., Inc.,
which was for summary judgment dismissing the third-party complaint insofar as asserted against the
third-party defendant Global Rental Co., Inc.

ORDERED that the order is affirmed insofar as appealed from, with costs.

April 8, 2008

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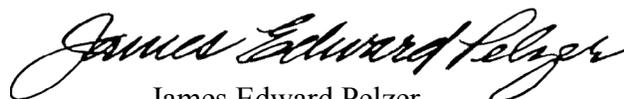
At the time of the subject accident, the plaintiff was employed by the third party-defendant John Caulfield Fiber Optic Services, Inc. (hereinafter JCFOS), as a cable splicer. The plaintiff travelled from utility pole to utility pole in a bucket truck provided by his employer and owned by the third-party defendant Global Rental Co., Inc. (hereinafter Global), to install an amplifier box into a cable television line. The cable television line was owned by the defendant third-party plaintiff, Mediaone of New York, Inc., f/k/a Mediaone of Greater New York, Inc., n/k/a Comcast of Boston, Inc. (hereinafter Media One). When he reached a particular pole which was located on “New York Water Shed Property,” the plaintiff climbed up the pole instead of using the bucket truck to reach Media One’s cable television line. As he climbed up the pole, his equipment fell to the ground, and he asked a coworker to convey his equipment to him using the bucket truck. The bucket truck that the plaintiff was using was located at the crest of an incline, and the coworker accessed the truck, moved it closer to the edge of the incline, and exited the truck with the engine still engaged. It was necessary to keep the engine running to operate the boom from the bucket. After the coworker extended the boom and prepared to hand the equipment to the plaintiff, the truck slid down the embankment, striking the wire that supported the pole. The pole snapped, and the plaintiff fell with it.

The plaintiff commenced this action against, among others, Media One, and Media One commenced a third-party action against, among others, Global, asserting a cause of action pursuant to Vehicle and Traffic Law § 388. JCFOS and Global moved, inter alia, for summary judgment dismissing the third-party complaint insofar as asserted against Global, contending that § 388 did not apply to this case since the truck was not being used as a vehicle on a public highway at the time of the accident. The Supreme Court denied the motion, and upon renewal and reargument, adhered to its prior determination. We affirm.

Global failed to establish, prima facie, that Vehicle and Traffic Law § 388 did not apply to this case. A triable issue of fact exists as to whether the manner in which the coworker operated the vehicle portion of the truck contributed to the accident (*see* Vehicle and Traffic Law § 388; *cf. Monell v International Bus. Machs. Corp.*, 47 AD2d 637, *affd* 38 NY2d 888). Additionally, pursuant to Vehicle and Traffic Law § 388(2), it is immaterial that the subject truck was not operated on a public highway.

FISHER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court