

**Morace v Hall**

2008 NY Slip Op 30930(U)

March 25, 2008

Supreme Court, Suffolk County

Docket Number: 0023905/2004

Judge: William B. Rebolini

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**SUPREME COURT - STATE OF NEW YORK**

**I.A.S. PART 7 SUFFOLK COUNTY**

PRESENT:

**WILLIAM B. REBOLINI**  
**Justice**

Joseph Morace,

Plaintiff,

-against-

Christine Hall, Andrew Delpenza, P.P.T. Pump &  
Tank Corporation and Reese Energy Storage  
Systems, Inc.,

Defendants.

Motion Sequence No.: 003; MD

Motion Date: 10/26/07

Submitted: 1/10/08

Index No.: 23905/2004

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Upon the following papers numbered 1 - 36 read upon this by defendants P.P.T. Pump & Tank Corporation and Reese Energy Storage Systems, Inc. for summary judgment: Notice of

Morace v Hall  
Index No. 04-23905  
Page No. 2

Motion and supporting papers, 1 - 16; Answering Affidavits and supporting papers, 17 - 34;  
Reply Affidavits and supporting papers, 35 - 36.

This is an action brought by plaintiff Joseph A. Morace to recover damages for injuries he sustained as the result of a motor vehicle accident which occurred on June 3, 2004 on Jamaica Avenue near its intersection with Route 112 in the Town of Brookhaven, Suffolk County, New York. The accident involved three motor vehicles, a black Hyundai operated by plaintiff, a green SUV operated by defendant Christine Hall and a truck operated by defendant Andrew Delpenza. It is alleged that Hall, after colliding with Delpenza, lost control of her motor vehicle, crossed the center double-yellow line into the oncoming westbound lane of Jamaica Avenue, struck the plaintiff's motor vehicle and allegedly pushed it backward into a white van owned by P.P.T. Pump & Tank Corporation and/or Reese Energy Storage Systems, Inc., which was parked at the westbound curb of Jamaica Avenue. Plaintiff claims that P.P.T. and Reese were negligent in their ownership, operation, maintenance, management, and control of the van and a dump truck which were involved in paving work on Jamaica Avenue.

Defendants P.P.T. Pump & Tank Corporation ("P.P.T.") and Reese Energy Storage Systems, Inc. ("Reese") have moved for summary judgment on the grounds there is no merit to any of the claims brought against them. In support, defendants rely upon the pleadings, the police accident report, plaintiff's deposition testimony, the deposition testimony of defendants Christine Hall, Andrew Delpenza, and P.P.T. Pump & Tank Corporation through its representative Tolga Azaz.

Plaintiff's deposition testimony was essentially as follows. On the date of the accident, he was traveling west on Jamaica Avenue. Jamaica Avenue is a two-way, east-west street, with one lane of traffic in each direction separated by a double yellow line. The accident occurred at the intersection of Route 112 and Jamaica Avenue. Near the intersection, there is a "No Stopping At Any Time" sign. Plaintiff testified that a white work van was parked in front of this sign, parallel to the curb. According to plaintiff, construction for a gas station was taking place two to three car lengths ahead of him on the right side of Jamaica Avenue. He testified that a dump truck involved in the construction was in the middle of Jamaica Avenue, perpendicular to the roadway, facing south and that P.P.T. Pump & Tank was written on the door of the dump truck. He further testified that the dump truck was blocking the westbound lane of Jamaica Avenue. Plaintiff testified a pick-up truck and a green SUV came into contact with one another a few feet from the dump truck. The green SUV's left front fender came into contact with the right front fender of the pickup truck. Thereafter, the green SUV traveled 75 feet and struck plaintiff's vehicle. Plaintiff testified that his vehicle then moved backward into the illegally parked truck owned by Reese.

Christine Hall testified she was driving a green Suzuki SUV on Route 112 and then made a left turn onto Jamaica Avenue. Hall testified that after she pulled onto Jamaica Avenue, she stopped in a grassy area because her SUV would not be able to safely pass the stopped truck and

Morace v Hall  
Index No. 04-23905  
Page No. 3

avoid the oncoming traffic. She testified there was construction going on but no cones, policemen, or construction workers directing traffic around the dump truck blocking traffic on the roadway. As she waited to proceed, she was struck by the pickup truck operated by Delpezza. After the impact, she lost control and struck plaintiff's vehicle which was moved backward into defendants' white van.

Andrew Delpezza testified that he was driving a red pickup truck westbound on Jamaica Avenue. He was working that day cutting down dead trees and bringing debris to the town dump. As he was driving, he saw a truck dropping off a dumpster at a gas station. The truck was in the middle of Jamaica Avenue and dropped off a 30 yard dumpster in the gas station parking lot. The truck was blocking the lane for oncoming traffic and was about 50 feet beyond the intersection of Route 112. Delpezza testified that after passing through the intersection, the front right bumper of his truck was grazed by the left front bumper of Hall's vehicle. Delpezza testified he was going one mile per hour and never saw the Hall vehicle until the collision. However, he stated that when he passed Route 112 he saw a vehicle speeding at 45 m.p.h. The vehicle was making a turn onto Jamaica Avenue and slid into his truck. It then hit the front bumper of the dumpster truck before striking plaintiff's car.

Tolga Azaz testified that he is the president of P.P.T. which owns the white van. He testified that the white van may have had "P.P.T. Pump & Tank" written on both sides. The words "Reese Energy" now appear on the white van. P.P.T. was performing work in the gas station parking lot, removing asphalt and re-paving the parking lot. He testified that he placed orange safety cones around the van and turned on the flashers to alert traffic in the westbound lane. Azaz testified that P.P.T. did not have any other vehicles at the scene of the accident. The dump truck did not belong to them. He testified that P.P.T. did not own any dump, rail or cement trucks. His only connection with these type of trucks was to hire a carting company to take away the asphalt or a cement mixing company. He had no written contract with these companies nor did he control, direct, manage or supervise these companies or the trucks they used at the job site. Additionally, he had no input as to where these companies parked or situated their trucks during the construction work. For this job, P.P.T. hired a carting company, Certified, to haul away the broken asphalt. Azaz testified he heard, but did not see, the collision. He had no recollection of a dump truck parked or stopped on Jamaica Avenue. He did not see anything obstruct westbound traffic on Jamaica Avenue.

To prove a prima facie case of negligence, a plaintiff must demonstrate the existence of a duty, a breach of that duty, and that the breach of such duty was a proximate cause of his or her injuries (see, Pulka v Edelman, 40 NY2d 781 [1976]; Engelhart v County of Orange, 16 AD3d 369 [2005], *lv denied* 5 NY3d 704 [2005]). Proving that an accident occurred, or that the conditions existed for such an accident, is insufficient to establish negligence. "'Proof of negligence in the air, so to speak, will not do'" (Martin v Herzog, 228 NY 164, 170 [1920], *quoting* Pollock, Torts [10 th Ed.], p. 472). And while proximate cause generally is a matter for the jury, a plaintiff who brings a negligence action must establish prima facie that the

Morace v Hall  
 Index No. 04-23905  
 Page No. 4

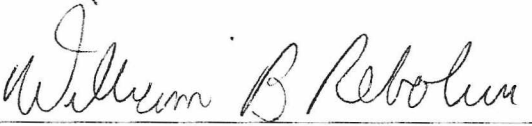
defendant's negligence was a substantial cause of the event which produced his or her injury (Derdarian v Felix Contr. Corp., 51 NY2d 308 [1980]; *see*, Maheshwari v City of New York, 2 NY3d 288 [2004]; Forman v City of White Plains, 5 AD3d 434 [Second Dept., 2004]); Beninati v. Mausarra, 178 Misc2d 941 [Nassau County Sup. Ct., 1998]).

The evidence is uncontroverted that the white van belonged to defendants. However, even assuming that the van was parked in violation of a parking regulation, and was partially blocking the westbound lane of Jamaica Avenue, the record is devoid of any evidentiary facts to establish that the violation was a proximate cause of the accident (Dormena v Wallace, 282 AD2d 425 [Second Dept., 2001]); Fermaglitch v. Arnone, 36 AD3d 584 [Second Dept., 2007]). Christine Hall testified she initially pulled off the roadway because the dump truck was blocking the roadway. When she pulled back onto the road, she collided with the Delpenza pick-up truck. Thereafter, her SUV traveled 75 feet and struck plaintiff's vehicle. The plaintiff's vehicle then moved backward into the white van. In his affidavit, plaintiff admits that his vehicle was stopped for a minute or two wholly within the westbound lanes when he was struck by an eastbound green SUV which entered the westbound lane after it collided with Delpenza's vehicle in the eastbound lane. Significantly, neither Hall or Delpenza, both of whom were traveling eastbound, testified their view was obstructed by the van's presence in the westbound lane nor were they ever attempting to avoid contact with that vehicle.

The evidence does demonstrate that the dump truck did interfere with the orderly flow of traffic on Jamaica Avenue. The only evidence connecting defendants to the dump truck, however, is plaintiff's testimony that P.P.T. Pump & Tank was written on the door. While according to the testimony of Azaz, the dump truck was neither owned or controlled by him, the burden of a court in deciding a motion for summary judgment is not to resolve issues of fact or to determine matters of credibility, but merely to determine whether such issues exist (Dyckman v Barrett, 187 AD2d 553 [Second Dept., 1992]) and, if material facts are in dispute or if different inferences may reasonably be drawn from facts themselves undisputed, a motion for summary judgment must be denied (Supan v Michelfeld, 97 AD2d 755 [1983]). Accordingly, the motion must be denied.

**ORDERED** that the motion for summary judgment dismissing the complaint is denied.

Dated: March 25, 2008

  
 HON. WILLIAM B. REBOLINI, J.S.C.

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION