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| <b>Sujoy v Rajendrakumar Patel</b>   |
| 2011 NY Slip Op 31477(U)   |
| May 31, 2011   |
| Supreme Court, New York County   |
| Docket Number: 115917/2006   |
| Judge: Joan A. Madden  |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon Joan A. Madden

PART 1

Index Number : 115917/2006  
**PAUL, SUJOY**  
 vs.  
**PATEL, RAJENDRAKUMAR P.**  
 SEQUENCE NUMBER : 003  
 SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached Memorandum Decision to the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**

**JUN 06 2011**

NEW YORK COUNTY CLERK'S OFFICE

Dated: May 31, 2011

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

-----X

PAUL SUJOY,  
Plaintiff,

INDEX NO. 115917/2006

-against-

**FILED**

RAJENDRAKUMAR PATEL,  
MERCURY TECHNOLOGY, INC., and  
AMERICAN GOLF CORPORATION,

**JUN 06 2011**

Defendants.

NEW YORK  
COUNTY CLERK'S OFFICE

-----X

JOAN A. MADDEN, J.:

In this action seeking damages in connection with an injuries sustained in an accident involving a golf cart, defendant American Golf Corporation ("AGC"), moves for summary judgment dismissing the complaint.<sup>1</sup> Plaintiff, Paul Sujoy ("Sujoy"), opposes the motion, which is granted for the reasons below.

Background

In this action, Sujoy seeks to recover damages for injuries he allegedly sustained on September 18, 2006, when he was taking part in golf outing organized by Deutsche Bank at a golf course operated by AGC at the South Shore Country Club. Sujoy injured when he was hit by a golf cart driven by defendant Mr. Rajendrakumar Patel ("Patel"), who was also participating in the outing. In the complaint Sujoy alleges AGC was negligent in its operation, ownership supervision and control of the golf cart.

Sujoy testified at his deposition that, on September 18, 2006, he was playing golf at a golf outing organized by Deutsche Bank for its corporate tax department. (Sujoy dep. at 22). According to Sujoy, the accident occurred around 2:20 pm. (Id. at 21, 22, 25). After teeing off

<sup>1</sup> By decision and order dated November 30, 2009, this court granted, without opposition, defendant Mercury Technology, Inc.'s motion for summary judgment dismissing the complaint against it.

while facing the back of his golf cart to return his golf club Sujoy heard some sort of whizzing sound similar to the one of a golf cart approaching. (Id. at 28, 31). Sujoy turned around and saw Patel driving his cart toward him pretty fast. (Id. at 28). Sujoy did not have enough time to avoid being hit by the cart, and his right leg got pinned between the rear of his golf cart and the front bumper of Patel's cart. (Id. at 28). After the accident, Sujoy received a phone call from Patel in which he apologized for the accident. (Id. at 49, 37).

Patel testified at his deposition that, he participated in a golf outing sponsored by Deutsche Bank at the South Shore Country Club on September 18, 2006. (Patel dep. at 8). According to Patel, he was not instructed as to how to use the golf cart before he drove it. (Id. at 15, 30, 31). Patel testified that, just before the accident, he was sitting in his golf cart, which was stopped with the intention to drive to the next hole. (Id. at 24,22). At the time, Sujoy was standing in between the front of Patel's golf cart and the rear of his golf cart and, Sujoy was putting his golf club back into his bag turning his back to Patel's golf cart (Id. at 19, 20, 22). Patel estimated that, the distance between the front of his cart bumper and Sujoy's cart rear bumper was about ten feet. (Id. at 18, 20).

Patel testified that the accident occurred while he was sitting in the cart in the driver's seat with one hand on the steering wheel, and he accidentally put his right foot on the accelerator for two to three seconds. (Id. at 24, 25). The golf cart moved quickly forward at a "very little speed" of less than two or three miles an hour and struck Sujoy. (Id. at 25,25). Patel testified that Sujoy saw his cart coming and tried to move to his left to avoid the accident. (Id. at 29, 30). Patel's golf cart hit and injured Sujoy's leg which came into contact with Patel's front bumper and a metal rod that was sticking out of Sujoy's rear bumper. (Id. at 27, 28, 29).

According to Patel, after the accident, he got out his golf cart and together with others pushed it away from Sujoy. (Id. at 32, 33). Patel saw blood on Sujoy's leg and told Sujoy that he was sorry. (Id. at 34, 35). Patel told the police that the incident occurred accidentally. (Id. at 35, 36).

On or about September 19, 2006, Patel wrote an email addressed to Mr. Edward Pfaff ("Pfaff"), the South Shore Golf Course General Manager, giving a description of how the accident occurred. (Id. at 36, 37). The email stated that:

Dear Sir, We were out there for Company outing on 09/18/2006. We were playing Golf and after strike [sic] we were about to leave from spot and getting in to Golf Cart. I just sit down on Golf Cart and instead of putting leg on brake I made mistake and just put leg on axeletar [sic] and my Golf Cart hit Mr. Sujoy and his Golf Cart. I am very sorry for mistake. I never take any form of alcohol so drinking was not a issue. Thanks, Raj Patel...

Patel testified that he had never played golf before the date of the accident. (Id. at 16). On the date the accident occurred Patel drove the golf cart between previously played holes and did not encountered any mechanical difficulties with the golf cart. (Id. at 20).

Pfaff testified at his deposition that he has been working for AGC since 1987 and he holds the title of general manager for the last ten years (Pfaff dep. at 9). According to Pfaff, AGC has leased and operated the South Shore Country Club for the City of New York since 1986. (Id. at 7, 8).

According to Pfaff, AGC leases the golf carts for the South Shore golf course from E-Z-GO on a fleet basis for a period of four years. (Id. at 12). AGC is responsible for the maintenance of the golf carts. (Id. at 12). He also testified that, participants are told to be careful in operating the golf carts. (Id. at 28). Pfaff testified that on the accident date he was aware of the golf outing that was taking place at South Shore Golf Club, and that approximately an hour after the golf outing started, Pfaff received a phone call reporting an accident on the cart

path of the sixth hole. (Id. at 18, 61, 30, 31). According to Pfaff, golf cart number 16 pinned Sujoy against his own golf cart, which resulted in the breaking of Sujoy's leg. (Id. at 34, 35).

Pfaff testified that after the accident, golf cart number 16 was sequestered and inspected by AGC's car mechanics and that "the results (of the inspection) were that the cart was operating to standard". (Id. at 33-36). Pfaff also testified that, the driver of golf cart number 16 when the accident occurred, Patel, sent him an e-mail describing the accident: "...generally speaking going of memory only he admitted that he hit his friend. He was terribly sorry, terribly shook up. Volunteered that there was no alcohol involved." (Id. at 58, 60).

With regard to golf cart operating instructions, the record shows that at the date of the accident a safety and operation instructions placard was posted on the dashboard of golf cart number 16. The Placard stated as follow:

*"SAFETY AND OPERATION INSTRUCTION. !WARNING! FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN SEVERE PERSONAL INJURY. Operate from the driver's side only. For golf course and non-highway use only by authorized drivers in designated areas. All occupants must be seated, keep entire body inside vehicle and hold on when is in motion. Maximum vehicle payload is 800 lbs. (363 kg) Including a maximum of 2 persons, golf bags, options and/or accessories. Be sure occupants are seated, move direction selector lever to desired position, apply service brake, turn key 'ON' and accelerate smoothly. To release parking (PARK) brake, depress service (lower) brake pedal. To stop, release accelerator pedal and apply service brake. Before leaving vehicle, turn key 'OFF', move the direction selector lever to forward position and engage parking (PARK) brake. Drive slowly straight up and down slopes and in turns. Use extra care in reverse, in congested areas or on wet or loose terrain. Do not operate under the influence of drugs or alcohol. Vehicle must be serviced by qualified personal only."*

AGC now moves for summary judgment dismissing the complaint, arguing that Patel's actions are the sole proximate cause of the accident, which resulted in the injuries sustained by plaintiff. In support of its argument, AGC relies on Patel's testimony in which he admitted his responsibility for the accident when he put his foot on the accelerator instead of the brake. AGC

also asserts that there is no evidence of any mechanical problem with the golf cart being operated by Patel at the time of the accident, or that AGC was negligent in the maintenance of the golf course or the golf carts. Additionally, AGC asserts that the injuries sustained by Sujoy were a foreseeable consequence of his participation in the golf outing and that Sujoy assumed the risk of injury. More specifically, AGC argues that the risk of injury resulting from the improper use of golf carts on a fairway is inherent in and arises out of the nature of playing and participating in a golf game. AGC also argues that the record shows that the placard provided sufficient instructions to operate safely the golf cart.

Sujoy counters that being hit by a golf cart driven by another golfer, as opposed to being hit by a golf ball, is not incidental to the golf game. Sujoy also argues that AGC's failure to properly warn and instruct Patel, a first time golfer, on how to operate a golf cart raises a triable issue of fact as to the proximate cause of Sujoy's injuries. With respect to the instruction placard affixed on the dashboard of the golf cart, Sujoy argues that it is insufficient since it fails to warn that the brake and the accelerator pedals were close together and easy to mistake one for the other. Additionally, Sujoy argues that AGC was negligent in providing an unsafe and defective golf cart to Patel, and that the metal protrusion, known as towing eye, located on the front of the golf cart which hit Sujoy should have been designed in a safer way.

In reply, AGC asserts that Sujoy's arguments regarding an alleged design defect should be disregarded since they were raised for the first time in the opposition to its motion. AGC also argues that Sujoy's claim of design defect is not supported by expert testimony and therefore is not probative, and that there is no other evidence in the record to support this theory. As for Sujoy's argument that Patel required additional operating instructions, AGC argues that Patel's deposition shows that he was able to use the golf cart without any difficulties while being able to

identify its different parts, which are comparable to those found in a car, and that the accident was caused by his placing his foot on the gas instead of the brake and not as the result of any failure to instruct him in the operation of the golf cart.

### Discussion

On a motion for summary judgment it is incumbent upon the moving party to “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case...” Winegrad v. New York Univ. Med. Center, 64 NY2d 851, 852 (1985). Once the proponent has established his prima facie showing, “the burden shift to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” Id.

To sustain an action for negligence, a plaintiff must show “1) the existence of a duty on defendant’s part as to plaintiff 2) breach of that duty, and 3) injury to plaintiff as a result thereof” Akins v. Glen Falls School Dist., 53 NY2d 325, 333 (1981). With respect to the third element, it must be shown that “defendant’s negligence was a substantial cause of the events which produced the injury” Boltax v. Joy Day Camp, 67 NY2d 617, 619 (1986)(internal citation and quotation omitted).

In the instant case, AGC owed a duty to its patrons, like Sujoy, to act “as a reasonably prudent golf course operator.” Lundin v. Town of Islip, 207 A.D.2d 778, 779 (2d Dept.1994). Here, AGC has provided evidence that it did not breach any duty owed to plaintiff. Specifically, AGC points to evidence showing that adequate warning and operating instructions were affixed on the golf cart involved in the accident. Moreover, the record shows that an inspection of the golf cart by mechanics after the accident did not reveal any mechanical problems. In addition,

AGC points to evidence, showing that any conduct on its part was not a substantial factor in causing Sujoy's injuries, including the deposition testimony of Patel indicating the accident was the result of Patel's action in stepping on the accelerator instead of the brake.

Sujoy has failed to controvert this showing. First, the record fails to raise a triable issue of fact as to whether there was a defect in the cart. In his opposition, Sujoy attributed the accident to the pedals of the golf cart being close together which made them easy to confuse the accelerator from the brake and to the unsafe design of the metal piece in front of the cart which caused him to be injured" (Sujoy Aff. ¶'s 6, 8). However, Sujoy does not have personal knowledge of these issues and provides no evidence, beyond his own speculative statements, to support these theories. The utilization of expert testimony to show that a product was defective "is the rule rather than the exception" unless "the defect may be inferred from proof that the product did not perform as intended by the manufacturer." Jackson v. Melvey, 56 A.D.2d 836, 837 (2d Dept. 1977). Here, even assuming *arguendo* that evidence from an expert is not required, there is no evidence in the record, such as testimony from Patel that the golf cart did not operate correctly or he was confused by the configuration of the pedals, to support Sujoy's theory that the cart was defective. Compare Mitchell v. Maguire Co., Inc., 151 A.D.2d 355 (1<sup>st</sup> Dept. 1989) (plaintiff's testimony regarding the failure of the vehicle steering mechanism was sufficient circumstantial evidence to support a jury's verdict for the plaintiff).

Moreover, Sujoy did not submit any evidence in support his argument that any failure to warn or instruct Patel, beyond the safety and operation instructions provided placard on the cart was a substantial factor in causing Sujoy's injuries, and, in fact, the record shows that the accident occurred when Patel was sitting in the golf cart and mistakenly put his foot on the

accelerator instead of the brake. For the same reason, Sujoy's argument that a first time golfer should receive additional instructions is unavailing.

Finally, as the court has found that there is no basis in the record that any negligence by AGC was a substantial factor in causing Sujoy's injuries, it need not reach whether Sujoy assumed the risk of injury from the golf cart.

Conclusion

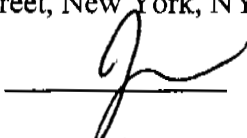
In view of the above, it is

ORDERED that motion for summary judgment by defendant American Golf Corporation is granted and it is further

ORDERED that the claims against defendant American Golf Corporation dismissed and severed; and it is further

ORDERED that the remaining parties shall appear for a pre-trial conference on June 16, 2011, at 2:00 pm in Part 11, room 351, 60 Centre Street, New York, NY.

Dated: May 31, 2011

  
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J.B.C.

**FILED**  
**JUN 06 2011**  
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