Hudson House Tenants Corp. v C.R.P. Sanitation, Inc.
2013 NY Slip Op 32764(U)
September 12, 2013
Sup Ct, Westchester County
Docket Number: 50846/2012
Judge: Linda S. Jamieson

Disp _____ Dec ___x__ Seq. Nos.__1-2_____ Type __misc.____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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HUDSON HOUSE TENANTS CORPORATION,

Plaintiff,

-against-

Index No. 50846/12

AMENDED DECISION AND ORDER

C.R.P. SANITATION, INC. and ANTHONY CARDILLO,

Defendants.

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The following papers numbered 1 to 5 were read on these motions:

Paper	Number
Notice of Motion, Affidavit, Affirmation and Exhibits	1
Notice of Cross-Motion, Affidavits, Affirmation and Exhibits	2
Memorandum of Law	3
Affirmation and Exhibit in Opposition	4
Reply Affirmation	5

There are two motions before the Court in this case arising out of an unusual set of circumstances. The first motion, brought by defendants, seeks to dismiss the action on the basis that plaintiff failed to include three necessary parties as defendants. The second motion, filed by plaintiff, seeks summary

judgment on three causes of action, the First, Second and Fifth, and an inquest as to damages.

The Facts

Although the parties have been playing games with the nuances of various evidentiary issues - a game which the Court will not deign to address - a review of the papers shows that the following facts are not in dispute. On the morning of January 30, 2010, a garbage truck owned by defendant C.R.P. Sanitation, Inc. ("CRP") and driven by defendant Cardillo, crashed into a pedestrian overpass in Irvington. The overpass spanned Ardsley Avenue West, leading from the Hudson House apartment building, owned by plaintiff, and connecting to the Metro-North train station called Ardsley-on-Hudson. The overpass was kept locked, and the only keyholders, according to plaintiff, are the Hudson House residents. The residents used the overpass to access the train station, and to get their mail; the mailboxes for the residents were located in the overpass.

When Cardillo crashed into the overpass, the accident lifted it off its pillars, cracked it and otherwise rendered it dangerous and unusable. The Village found the overpass to be structurally unsound, and condemned it. It has since been removed. Plaintiff submitted to the Court photographs of the overpass before the accident, and the day of the accident, which show the destruction caused by the truck.

Cardillo received a summons for two violations of the Vehicle and Traffic Law, VTL §§ 385.14 (disobeying posted clearance signs) and 1180-A (exceeding reasonable and prudent speed). Cardillo pleaded guilty on April 24, 2012 to a violation of Section 385.14.

Plaintiff stated, in its Bill of Particulars, that it owned the entirety of the overpass, but that the other end of the overpass was located on property owned by the Metropolitan Transportation Authority ("MTA"), which owns and operates Metro-North. It further stated that "the owner of the property over which the Bridge span and its pillars were then located was the Village of Irvington."[1]

Plaintiff now proposes to rebuild the overpass differently, so that it no longer ends on MTA property. Instead, the end will be on property owned by Irvington. This modification is to allow the installation of an elevator.

The Motions

Defendants move to dismiss the action, claiming that the Village of Irvington ("Irvington"), the MTA and the Town of Greenburgh ("Greenburgh"), in which Irvington is situated, are all necessary parties to the action. Defendants acknowledge that

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[1]Although defendants argue that these sentences are "judicial admissions" made by plaintiff indicating that others own the overpass, clearly that is not at all what they mean. Rather, all that they establish is that while plaintiff owned the entirety of the overpass, the land under one end, the land beneath the overpass, and the pillars are owned by others.

as the parties seeking dismissal of the action for failure to join necessary parties, they "must establish that joinder is necessary to accord full relief to the parties presently joined or that the nonjoined parties would be inequitably affected by any judgment that might result in the action." (Citations omitted). Defendants argue that the reason that dismissal is appropriate is because Irvington, Greenburgh and the MTA are the "owners of the bridge, with the same rights and privileges as those of plaintiff. As such, they would have the same right to bring suit against the moving defendants for the damage to the bridge."

Having reviewed all of the papers, the Court disagrees with defendants' premise. There is no evidence that Irvington, Greenburgh and the MTA are the "owners" of the bridge. Indeed, both Irvington and Greenburgh submit Affidavits, from the Village Administrator and the Commissioner of Public Works, respectively, stating the opposite.[2] Irvington avers that "the Village has never had an ownership interest in the Pedestrian Overpass. Instead, at all times the Village recognized Hudson House, not the Village, as the owner of the Pedestrian Overpass. . . ." The Village further states that it "has no interest in or future

[2]There is no merit to defendants' assertions that these Affidavits are "insufficient on their face." These are sworn and binding statements which Irvington and Greenburgh would be hard-pressed to disavow.

intention to assert that it has any ownership interest in the Pedestrian Overpass."

Similarly, Greenburgh states that it "has never had an ownership interest in either West Ardsley Avenue or the Pedestrian Overpass." It goes on to state that it "has no interest or future intent in asserting that it has any ownership interest in the Pedestrian Overpass."

The MTA does not submit any affidavit in support of plaintiff's motion. Rather, plaintiff submits a letter from 1997, from the Senior Deputy Director, Real Estate for the MTA to plaintiff that states that "As you can see, our property line extends only to the eastern facade of the station building. The pedestrian bridge is clearly outside of our right of way." Even though this is not a sworn document, there is no evidence that the MTA would have any interest in the overpass since plaintiff has represented that its new plans do not include any MTA property.

Since all of these three entities admit that they have no ownership interest in the overpass, there is no need for them to be joined as necessary parties. *See Ramsey v. Ramsey*, 69 A.D.3d 829, 894 N.Y.S.2d 73 (2d Dept. 2010) ("The plaintiff submitted undisputed documentary evidence demonstrating that the Village possessed no interest in the property which would be affected by the partition so as to mandate its joinder as a defendant."). *See also Yaeger v. Town of Lockport Planning Bd.*, 62 A.D.3d 1250,

877 N.Y.S.2d 800 (4th Dept. 2009) (where property owners had conveyed their interest in the land in question, they were no longer necessary parties). While it is true that the Village's permission is required for plaintiff to rebuild the overpass, that permission is part of an approval process; the Village must consent to the rebuilding as a municipal overseer, and not as an owner. Accordingly, defendants' motion to dismiss the action is denied.

Turning now to plaintiff's motion for partial summary judgment, the Court examines each of the three causes of action at issue: the First, which is for negligence by Cardillo in driving into the overpass; the Second, for negligence per se by Cardillo in failing to obey New York law; and the Fifth, against CRP for vicarious liability for Cardillo's actions during the course of his employment with CRP.

First, there can be no dispute that Cardillo was negligent per se; he was charged with the violation of two sections of the VTL, and pleaded guilty to the violation of one of those sections, VTL § 385.14. This constitutes negligence per se. *Vainer v. DiSalvo*, 79 A.D.3d 1023, 914 N.Y.S.2d 236 (2d Dept. 2010) (" A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law."). *See also Matos v. Salem Truck Leasing*, 105 A.D.3d 916, 963 N.Y.S.2d 366 (2d Dept. 2013) ("The plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability through his affidavit,

which demonstrated that Bennett was negligent because he violated Vehicle and Traffic Law" sections).

Defendants next argue that plaintiff has not established that Cardillo was negligent because no measurements were taken, so that plaintiff cannot establish that the clearance warning signs were accurate. Basically, their argument (or what the Court interprets their argument to be) boils down to this - if the sign was inaccurate by overstating the clearance level, and led Cardillo to believe that his truck would fit, it was not his fault that he crashed. Rather than rebut this argument by setting forth evidence that the clearance level was accurate, plaintiff instead merely argues that because Cardillo pleaded guilty, he is negligent. However, it is well-settled that because a defendant "pleaded guilty to the traffic offense does not establish negligence. It is well settled that a person who pleads guilty to a traffic offense is permitted to explain the reasons for the plea, and it is for the jury to decide what weight, if any, to give to the testimony." *Guarino v. Woodworth*, 204 A.D.2d 391, 611 N.Y.S.2d 638 (2d Dept. 1994). Accordingly, the Court finds that plaintiff has not made out its prima facie case, and the motion for summary judgment as to the First Cause of Action is denied.

As for the Fifth Cause of Action, CRP has admitted that Cardillo was acting within the scope of his employment at the time of the accident. However, it argues that it should not be

vicariously liable for his actions because he was not authorized to crash into the overpass. This is not the correct analysis, however - CRP's theory would absolve all employers from liability for accidents because, presumably, no employer expressly authorizes its employees to have accidents. *See, e.g., Rausman v. Baugh*, 248 A.D.2d 8, 682 N.Y.S.2d 42 (2d Dept. 1998) ("The purpose of the rule is to render the employer responsible, in proper cases, for the employee's tortious acts, which although errant, were done in furtherance of the employer's business.").

Rather, the law plainly states that "An employer is vicariously liable for its employees' torts under the theory of respondeat superior if the acts were committed while the employee was acting within the scope of his or her employment" at the time of the accident. *Xin Tang Wu v. Ng*, 70 A.D.3d 818, 894 N.Y.S.2d 141 (2d Dept. 2010). Further, "An act is considered to be within the scope of employment if it is performed while the employee is engaged generally in the business of his employer, or if his act may be reasonably said to be necessary or incidental to such employment." *Id.* That is to say, that if Cardillo were on a break, or doing some personal business at the time of the accident, CRP might not be liable. However, there is no evidence that he was doing anything other than CRP's business at that time. Accordingly, the motion for summary judgment as to the Fifth Cause of Action is granted.

Plaintiff requests an inquest on damages for these causes of action. That is granted, but shall be deferred until the time of trial on the remaining causes of action.

The Court notes that the parties are scheduled to appear for a Compliance Conference in the Compliance Part on July 16, 2013.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
SEPTEMBER 12, 2013

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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