

Burgos v Saquipay
2020 NY Slip Op 30971(U)
April 13, 2020
Peekskill City Court
Docket Number: SC-564-19
Judge: Reginald J. Johnson
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SC-564-19

PEEKSKILL CITY COURT
 COUNTY OF WESTCHESTER: STATE OF NEW YORK

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CARMEN BURGOS,

Plaintiff,

--against--

DECISION & ORDER

Index No. SC-564-19

NESTOR L. SAQUIPAY d/b/a PRECISION
 PAINTING and REMODEL,

Small Claims Part

Defendant.

-----X

Appearances:

Carmen L. Burgos, pro se

Peter Lu, witness

Elicer Olmo, witness

Diego Fernandez, President of Precision Painting and Remodel, Inc.¹

Nestor L. Saquipay d/b/a Precision Painting and Remodel, pro se

Court interpreter

Reginald J. Johnson, J.

This is a personal property damage action commenced pursuant to Uniform City Court Act (UCCA), Article 18-A. The plaintiff and the defendant appeared pro se. Peter Lu and Elicer Olmo testified as witnesses on behalf of the plaintiff. Diego Fernandez (President) appeared on behalf of Precision Painting and Remodel, Inc. A court appointed Spanish interpreter assisted the defendant during the trial.

In deciding this matter, the Court considered the testimony of the parties and the following exhibits: Police Accident Report (Plt's "1"), 8 photos (collectively Plt's "2"), GEICO estimate

¹ Diego Fernandez is the President of Precision Painting and Remodel, Inc. (PPR); the vehicle defendant was operating at the time of the accident was registered to PPR. The Court finds that PPR was properly named in this action. The Court also finds that since Mr. Fernandez participated in this action without raising any objection or motion to dismiss as to the Court's in personam jurisdiction over PPR, the defendant waived same [CPLR §3211(a)8(e); see *Rubino v. City of New York*, 145 A.D.2d 285, 288 [1st Dept. 1989] (when a defendant participates in a lawsuit on the merits, he indicates his intention to submit to the court's jurisdiction over the action and by appearing 'informally' in this matter, he confers in personam jurisdiction on the court); *Cadlerock Joint Venture, L.P. v. Kierstedt*, 119 A.D.3d 627 [2d Dept. 2014] (a defendant may waive the issue of lack of personal jurisdiction by appearing in an action, either formally or informally, without raising the defense of lack of personal jurisdiction in an answer or pre-answer motion to dismiss)].

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(Plt's "3"), copy of towing receipt² (Plt's "4"), and GEICO letter dated 2/25/20 to defendant (Def's "A").

Procedural History

On November 18, 2019, the plaintiff commenced this Small Claims action against the defendant for personal property damage arising from a car accident. On January 2, 2020, the Court sent notices to the parties to appear on January 22, 2020. At the January 22nd court appearance, this matter was adjourned to February 22, 2020 for trial. On February 26th, this matter proceeded to a bench trial where both parties fully presented their cases and rested.

Facts

The disputed facts are not complicated. On October 17, 2019, plaintiff alleges that she was parked facing East in front of 1025 Brown Street, Peekskill (Chase bank) (Plt's "2") when she pulled from her parked position and proceeded several feet toward the intersection of Elizabeth Street and as she proceeded to make a right turn on Elizabeth Street, a white van (Plt's "2") driven by the defendant struck her 2009 Subaru Tribeca on the front driver's side and fender area causing damage (Plt's "2"). Plaintiff testified that her entire vehicle was in the roadway prior to the accident and that Brown Street accommodates only one vehicle at a time in either direction. Plaintiff's vehicle towed from the scene of the accident by Nightcrawler Towing and Rescue, Inc. to its facility on Washington Street, Peekskill, N.Y. Plaintiff submitted a tow bill in the sum of \$1213.99. In support of her claim for damages to her vehicle, the plaintiff submitted an estimate from defendant's insurer, GEICO, in the sum of \$4,044.63. Plaintiff said that defendant offered to pay only \$400.00 of her damages, which she rejected.

Elicer Olomo, plaintiff's grandson, was sitting in the front passenger seat at the time of the accident. He testified that the plaintiff's vehicle pulled from a parked position in front of the Chase bank into the roadway on Brown Street and proceeded toward Elizabeth Street to make a right turn when defendant's van struck plaintiff's vehicle on the left side. According to Mr. Olomo, after the van struck plaintiff's vehicle it proceeded up the hill on Elizabeth Street near a parking lot, where he was able to run up the hill and stop the defendant to inform him that he had just struck plaintiff's vehicle. Peter Lui, owner of Nightcrawler Towing & Recovery, Inc., testified that he was standing in front of the Chase bank at the time of the accident, and that he

²The original Nightcrawler receipt is attached to plaintiff's exhibit "3".

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saw the defendant attempt to overtake the plaintiff's car on the roadway as she attempted to make a right hand turn on Elizabeth Street causing the collision.

Defendant testified that he was driving East on Brown Street when he was proceeding to make a right turn on Elizabeth Street, plaintiff's vehicle struck his van on the front passenger side causing damage. Defendant stated that his van was in the roadway in front of plaintiff's vehicle at the time of the accident and that the plaintiff's caused the collision. Defendant said that he continued driving up the hill on Elizabeth Street after the accident because he was scared.

Diego Fernandez testified that he is the owner of the vehicle that the defendant was driving at the time of the accident. He stated that defendant informed him that the plaintiff struck the side of the white van as defendant was making a turn onto Elizabeth Street. Mr. Fernandez notified his insurance carrier, GEICO, of the accident and an insurance adjuster inspected the plaintiff's vehicle and estimated the cost of repair was \$4,044.63. Mr. Fernandez said that GEICO sent him a claim letter that indicated he was only 10% (\$404.46) liable for the plaintiff's damages, so he offered that sum to the plaintiff to settle the case, which she rejected.

Discussion

In a small claims action, the trial court is tasked with conducting a hearing "in such a manner as to do substantial justice between the parties according to the rules of substantive law..." (see UCCA §1804; *Ross v Friedman*, 269 AD2d 584 [2000]; *Williams v Roper*, 269 AD2d 125, 126 [2000]). Further, credibility determinations made by the trial court are given great deference, as the trial court had the opportunity to observe and evaluate the testimony and demeanor of the witnesses (see, *Vizzari v. State of New York*, 184 A.D.2d 564 [1992]). This deference applies with greater force to judgments rendered in the Small Claims Part of the court (see, *Williams v. Roper*, 269 A.D.2d at 126). It has been held that even if the appellate court disagrees with the small claims court on an arguable point of fact or law, it should not reverse absent a showing that there is no support in the record for the trial court's conclusions or that they are otherwise so clearly erroneous as to deny substantial justice (see, *Payne v. Biglin*, 2 Misc. 3d 127[A], [App Term, 9th & 10th Jud Dists 2003]).

A cause of action for personal property damage requires the plaintiff to prove (1) defendant owed a duty to the plaintiff, (2) defendant breached his duty, (3) and defendant's breach of duty was the proximate cause of plaintiff's damages (see, *Irizarry v. Heller*, 95 A.D.3d 951 [2d Dept. 2012]; *Kievman v. Philip*, 84 A.D.3d 1031 [2d Dept. 2011]). Generally, "[d]river's

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have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident” (*Singh v. Avis Rent A Car Sys., Inc.*, 119 A.D.3d 768, 769 [3d Dept. 2015]; see *Rost v. Stolzman*, 81 A.D.3d 1401, 1402 [3d Dept. 2011]; *Woolley v. Coppola*, 179 A.D.2d 991, 992 [3d Dept. 1992]). Drivers have an obligation to exercise reasonable care under the circumstances presented and to see and respond to the conditions in the roadway within their view (see, *McKenna v. Reale*, 137 A.D.3d 1533 [3d Dept. 2016]). Based upon the evidence and testimony presented at trial, the Court finds that the defendant was negligent in attempting to overtake the plaintiff’s vehicle as she was attempting to turn on Elizabeth Street. It is now incumbent upon the plaintiff to prove the damages to her vehicle by either one paid invoice or two itemized estimates (see UCCA §1804). However, when the damaged personal property is an automobile, the general rule is that the measure of damages is either the difference in market value immediately before and immediately after the accident, or the reasonable cost of repairs necessary to restore the vehicle to its former condition, whichever is less, provided the cost of necessary repairs does not exceed the value of the vehicle before the accident (see *Gass v. Agate Ice Cream*, 264 N.Y. 141 [1934]; *Parkoff v. Stavsky*, 109 A.D.3d 646 [2d Dept. 2013]; *Johnson v. Scholz*, 276 A.D. 163 [2d Dept. 1949]).

In the case at bar, the plaintiff presented a single repair estimate from the defendant’s insurer, GEICO, as proof of her damages (Plt’s “3”). GEICO estimated the cost to repair plaintiff’s vehicle was \$4,044.63. Since the plaintiff may present a single repair estimate from the defendant’s insurer to establish her damages (see *Felipe v. Das*, 22 Misc.3d 141(A) [App Term (9th & 10th Jud. Dis. 2009)] and since the defendant did not contest GEICO’s repair cost valuation (see *Jenkins v. Etlinger*, 55 N.Y.2d 35, 39 [1982]) (“[T]he plaintiff need only present evidence as to one measure of damages, and that measure will be used when neither party presents evidence going to the other measure.”), the Court finds that the cost to repair the plaintiff’s vehicle is the sum of \$4,044.63. Accordingly, in the interests of substantial justice and pursuant to the rules and principles of substantive law (UCCA §§1804, 1807), the Court awards the plaintiff the sum of \$4,044.63.³

³ The plaintiff declined to pursue a claim for towing charges at trial.

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Based on the aforesaid, it is

Ordered that the plaintiff is awarded a judgment in the sum of \$4,044.63 plus \$20.00 costs for a total judgment of \$4,064.63.

This constitutes the decision and order of the Court.

Reginald J. Johnson

Hon. Reginald J. Johnson
Peekskill City Court Judge

Dated: Peekskill, New York
April 13, 2020

Entered: _____

Concetta Cardinale, Chief Clerk

To: Ms. Carmen Burgos
801 Main Street, Apt. C
Peekskill, New York 10566

Mr. Nestor L. Saquipay
147 Union Ave
Peekskill, New York 10566

Diego Fernandez, President
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