

**Shaw v Worldwide Flight Servs.**

2020 NY Slip Op 31359(U)

May 11, 2020

Supreme Court, Kings County

Docket Number: 520975/2017

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 73

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NATASHA SHAW,  
Plaintiff,

Index No. 520975/2017

- against -

**DECISION/ORDER**

WORLDWIDE FLIGHT SERVICES,  
CARGO AIR SERVICES, INC.,  
CARGO AIRPORT SERVICES USA LLC and  
HUGO PENA,

Defendant(s).

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The following papers numbered 1 through 3 were read on this motion.

<b>Papers:</b>	<b>Numbered:</b>
Notice of Motion/Order to Show Cause/ Affirmations/Affidavits/Exhibits/Memo of Law	1
Answering Affirmation/Affidavits/Exhibits	2
Reply Affirmations/Affidavits/Exhibits	3

Upon the foregoing papers, the Court finds as follows:

In this action to recover damages for serious personal injuries, plaintiff NATASHA SHAW seeks summary judgment on liability pursuant to CPLR 3212 as to defendants WORLDWIDE FLIGHT SERVICES, CARGO AIR SERVICES, CARGO AIRPORT SERVICES USA and HUGO PENA. Plaintiff also seeks to amend the complaint to name her husband Daniel Shaw as additional plaintiff and include a loss of consortium claim on his behalf of her husband and setting the matter down for an inquest on damages. Defendants oppose the motion in its entirety.

In support of the motion, plaintiff submitted he own deposition transcript as well as defendant Hugo Pena’s. At her deposition conducted October 12, 2018, plaintiff testified that that on March 1, 2017. at around 9:30 pm, while working at JFK Airport as a security screener for Corporate Loss Prevention Association [“CPLA”], she suffered injuries when she was struck by a forklift operated by Hugo Pena.

Plaintiff testified as follows:

Q: And once he handed the notebook back to you, what did you do then?

A: I proceeded to walk away.

Q: And did you have any other conversations with Hugo while he was on the forklift?

A: No.

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A: I turned to my left and walked.

Q: Do you remember how many steps you had walked away when the accident occurred?

A: Approximately three.

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Q: Did you hear any horns while you were walking those three steps?

A: No.

Q: Did you hear any alarms while you were walking those three steps?

A: No.

Q: Did you hear anyone cry out or yell while you were walking those three steps?

A: No.

Q: So your first indication that you were going to be struck by the forklift was when it actually struck you?

A: Yes.

At a deposition conducted February 11, 2019, Hugo Pena testified as follows:

Q: Now you already indicated you remember there being an accident involving Ms. Shaw on March 1, 2017?

A: Yes.

Q: On that date do you recall which company you were working for?

A: It was Cargo Airport Services.

Q: And on that date for Cargo Airport Services, you were a senior cargo manager, correct?

A: Yes.

Q: On that particular day at the time of the accident, were you operating a forklift?

A: Yes.

Q: Now, I want you to think about one minute before the accident involving Mrs. Shaw, one minute before the accident, did you know where Mrs. Shaw was?

A: One minute before, she was behind -- she handed a document to me and she stayed behind, that's the only thing I remember.

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Q: After she handed you the document, did you start to drive away on the forklift?

A: Yes.

Plaintiff also submitted for the Court's review a videotape of the accident which was consistent with the testimony of plaintiff and Mr. Pena.

The court finds the plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability in this negligence action (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 487 N.Y.S.2d 316, 476 N.E.2d 642). In opposition, the defendants failed to raise a triable issue of fact on liability. There is no defense to the action (*see Rodriguez v City of NY*, 31 NY3d 312). The only triable issue of fact is the amount and extent of damages.

The branch of plaintiff's motion to amend the complaint to add a claim for loss of consortium on behalf of plaintiff's husband Daniel Shaw is granted.

Accordingly, it is hereby

**ORDERED**, plaintiff's motion for partial summary judgment on liability is **GRANTED**; and it is further

**ORDERED**, the complaint is amended to include DANIEL SHAW as plaintiff and add a cause of action on his behalf for loss of consortium.

This is the decision and order of this court.

Dated: May 11, 2020



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PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020