

Gutierrez v County Waste Mgt., Inc.
2020 NY Slip Op 35023(U)
May 7, 2020
Supreme Court, Westchester County
Docket Number: Index No. 54862/2018
Judge: Linda S. Jamieson
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
VICTORIA GUTIERREZ and DANIEL GUTIERREZ,

Plaintiffs,

DECISION AND ORDER

-against-

Index No.: 54862/2018

COUNTY WASTE MANAGEMENT, INC.
and MICHAEL J. MITCHELL,

Defendants.
-----X

The following papers numbered 1 to 4 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavit, Affirmation and Exhibits	1
Memorandum of Law	2
Affirmation in Opposition	3
Reply Affirmation	4

The Court has before it plaintiffs’ motion for summary judgment on liability pursuant to CPLR § 3212 in this car accident case.

Background

This action arises from a motor vehicle accident that occurred on July 26, 2017 on Relyea Place in New Rochelle, New York. According to plaintiffs, Victoria Gutierrez was driving along Relyea Place when she came to a complete stop curbside to pick up a pedestrian, her friend Armando Lopez. Plaintiffs claim that, while at a complete stop curbside, defendant-driver

Michael Mitchell was driving a garbage truck owned by defendant County Waste Management, Inc. during the course of his employment. Mitchell reversed the truck down a driveway onto and across Relyea Place when he struck the plaintiffs' stopped vehicle.

Plaintiffs contend that defendants failed to obey Vehicle and Traffic Law (VTL) §§ 1143, 1173, and 1211(a). Specifically, plaintiffs allege that Mitchell entered and crossed Relyea Place, failing to yield to plaintiffs' vehicle in violation of VTL § 1143. Second, plaintiffs allege that he violated VTL § 1173 by backing out of the driveway onto Relyea Place without stopping at a place where he would have an unobstructed view of approaching or stopped traffic. Third, plaintiffs alleged that Mitchell reversed the garbage truck out of the driveway and entered the roadway when it was unsafe to do so, in violation of VTL § 1211[a].

Plaintiff Victoria Gutierrez, in pertinent part, testified at her deposition that she had come to a complete stop as she pulled over to the curbside to offer a ride to Lopez, when she felt a strong impact followed by two other impacts resulting from defendant reversing the garbage truck into the roadway. Lopez also testified at his deposition that he observed the garbage truck reversing from the driveway of 32 Relyea Place at a high rate of speed, and that the garbage truck never stopped prior to entering the roadway. Lopez further testified that he heard plaintiff honk her car horn to alert Mitchell of the impending collision, yet Mitchell continued to reverse his truck into her car. Mitchell testified at his deposition that he did not see the plaintiff's vehicle prior to impact.

Defendants contend that the deposition testimony of plaintiff, defendant and Lopez raise issues of fact regarding any negligence of defendant and comparative negligence of plaintiff. First, Mitchell testified that the garbage truck is equipped with a total of five sideview mirrors, a "back up" camera able to view 30 to 40 feet behind the truck, and a reverse alarm, strobe lights

and LED lights that are activated once the truck is put into reverse mode. He testified that, on the date of the incident, he reversed and stopped the truck to keep a proper lookout for two to three seconds to confirm the roadway was clear to proceed. He testified that he saw Lopez across the street but did not see plaintiff's vehicle until she was directly behind the truck. He elaborated that plaintiff "had to be going fast" since she was attempting to "go around" the garbage truck and then abruptly "threw the car in park" when the side of the truck came into contact with the rear passenger-side of plaintiff's vehicle.

Secondly, counsel cited plaintiff's deposition testimony where she admits that she was stopped for "less than one minute" near a 'No Parking' sign and did not see the truck prior to the first impact. Third, counsel cited Lopez's deposition testimony stating that "[e]verything happened so quickly" that Lopez was unable to give any time frame as to how long plaintiff was at a complete stop prior to the impact or for how long he saw defendant's truck prior to the impact.

Analysis

A party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law by proffering sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issue of fact. (*See Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]; *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]). "Once this showing has been made ... the burden shifts 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" (*see Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

It is well-settled law that there can be more than one proximate cause of a motor vehicle accident and, thus, “a plaintiff moving for summary judgment on the issue of liability in an action alleging negligence must establish, prima facie, not only that the defendant was negligent but that the plaintiff was free from comparative fault.” (*Taylor v. Brat-Auto Sales, Ltd.*, 145 A.D.3d 701 [2d Dept. 2016], quoting *Adams v. Bruno*, 124 A.D.3d 566, 567 [2d Dept. 2015]). The issue of comparative fault is generally a question for the trier of fact. (*Id.*).

The deposition testimonies of plaintiff Victoria Gutierrez, defendant and non-party pedestrian Lopez contain conflicting accounts of the accident. On one hand, plaintiff alleges that her vehicle was at a complete stop when defendant failed to observe her vehicle, failed to keep a proper lookout prior to reversing the garbage truck into the roadway or otherwise yield to plaintiff’s right of way in violation of VTL §§ 1143,¹ §1173,² and §1211[a].³ In contrast, defendant testified that he did not see plaintiff’s vehicle because it was nowhere to be seen. Rather, plaintiff was proceeding on Relyea Place when she came to an abrupt stop to offer a ride to her friend Lopez. He further testified that plaintiff was trying to pass around the garbage truck as he continued reversing the truck into roadway. This raises issues of fact related to plaintiff’s comparative negligence. Based on this conflicting testimony, plaintiff failed to establish that defendant’s alleged negligent operation of the garbage truck was the sole proximate cause of the accident so as to entitle plaintiffs to summary judgment on the issue of

1 VTL §1143 [Vehicle entering a roadway] provides that “[t]he driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.”

2 VTL §1173 [Emerging from alley, driveway, private road or building] provides that “[t]he driver of a vehicle emerging from an alley, driveway, private road or building shall stop such vehicle immediately prior to driving onto a sidewalk extending across any alleyway, building entrance, road or driveway, or in the event there is no sidewalk, shall stop at the point nearest the roadway to be entered where the driver has a view of approaching traffic thereon.

3 VTL §1211[a] [Limitations on backing] provides that “[t]he driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

liability. (*Bonilla v. Calabria*, 80 A.D.3d 720, 720, 915 N.Y.S.2d 615, 616 [2d Dept. 2011];
Franzese v. Consolidated Dairies, Inc., 83 A.D.3d 775 [2d Dept. 2011].

All other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto. Based on the foregoing, plaintiffs' motion for summary judgment is denied in its entirety.

The Court will notify counsel of the future date, time, and manner of a Settlement Conference in the Settlement Conference Part.

The foregoing constitutes the Decision and Order of this Court.

Dated: May 7, 2020
White Plains, New York



HON. LINDA S. JAMIESON, J.S.C.

To: Parties on e-Filing