

<b>Scotti v Rauschendorfer</b>
2021 NY Slip Op 33316(U)
April 8, 2021
Supreme Court, Ulster County
Docket Number: Index No. EF2017-108
Judge: James P. Gilpatric
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**STATE OF NEW YORK  
SUPREME COURT**

**ULSTER COUNTY**

**STEVEN A. SCOTTI, FOTINI D. SCOTTI and  
LAURA N. BURGHER,**

**DECISION**

**Plaintiffs,**

**Index No.: EF2017-108**

**- against -**

**STEFAN J. RAUSCHENDORFER, DEBORAH J. QUINLAN,  
ASPLUNDH TREE EXPERT CO., CENTRAL HUDSON GAS &  
ELECTRIC CORPORATION, ETHAN ALLEN STAFFING,  
ETHAN ALLEN PERSONNEL GROUP, INC.  
And ORLANDO SANTIAGO,**

**Defendants.**

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**Supreme Court, Ulster County  
R.J.I. No.: 55-17-01236**

**Present: James P. Gilpatric, J.S.C.**

**Appearances:**

**RUSK, WADLIN, HEPPNER & MARTUSCELLO, LLP  
Attorneys for the Scotti Plaintiffs  
255 Fair Street  
P.O. Box 3356  
Kingston, New York 12402  
By: John G. Rusk, Esq.**

**BASCH & KEEGAN, LLP  
Attorneys for Plaintiff Laura Burgher  
307 Clinton Avenue  
P.O. Box 4235  
Kingston, New York 12402  
By: John A. DeGasperis, Esq.**

LAVIN, CEDRONE GRAVER, BOYD & DiSIPIO  
Attorneys for Defendants Asplundh Tree and Central Hudson  
420 Lexington Avenue, Suite 335  
New York, New York 10170  
By: Timothy J. McHugh, Esq.  
PENINO & MOYNIHAN, LLP  
Attorneys for Defendant Laura Burgher  
1025 Westchester Avenue, suite 403  
White Plains, New York 10604  
By: Henry Liao, Esq.

MARIN GOODMAN LLP  
Attorneys for Defendants Stefan J. Rauschendorfer and  
Deborah J. Quinlan  
500 Mamaroneck Avenue, suite 102  
Harrison, New York 10528  
By: Christopher J. Walsh, Esq.

AHMUTY DEMERS & McMANUS  
Attorneys for Defendants Ethan Allen and Orlando Santiago  
634 Plank Road, Suite 203A  
Clifton Park, New York 12065  
By: Matthew W. Cramer, Esq.

**Gilpatric, J.:**

This action arises from a multiple-vehicle motor vehicle accident in the northbound lane on Route 9W in Saugerties, New York at approximately 8:30 a.m. on October 26, 2016. Plaintiff Steven A. Scotti was driving an automobile that was struck in the rear, while he was stopped in the northbound lane of Route 9W, behind two to four other cars due to a lane closure for tree trimming work. Plaintiffs Steven Scotti and Fotini Scotti commenced an action against Laura Burgher, Stefan Rauschendorger, Deborah J. Quinlan and Asplundh Tree Expert Co. (hereinafter "Asplundh Tree") on Ulster County supreme Court on January 13, 2017. Thereafter, they served an Amended Complaint and then a Second Amended Complaint, in which they also sued Central Hudson Gas & Electric Corporation (hereinafter "Central Hudson"), Ethan Allen Staffing, Ethan

Allen Workforce Solution, Ethan Allen Personnel Group, Inc. (hereinafter "Ethan Allen") and Orlando Santiago on or about April 10, 2018.

Laura Burgher was the operator of a vehicle that rear-ended another vehicle that resulted in a chain collision that also included Mr. Scotti's vehicle. On or about July 31, 2018, she commenced a lawsuit against defendants Asplundh Tree, Central Hudson, Ethan Allen and Orlando Santiago. The two actions were consolidated for a joint trial all purposes on October 7, 2018. The defendants Asplundh Tree, Central Hudson, Ethan Allen and Orlando Santiago move in two separate motions for summary judgment, pursuant to CPLR 3212, for an Order dismissing the plaintiffs' complaint against them.

The undisputed facts are that on October 26, 2016, the plaintiff Steven Scotti was rear-ended in a multi vehicle accident. Mr. Scotti was driving a 2016 Honda Accord and the accident occurred on Route 9W, in the northbound lane traveling towards Saugerties, New York. The accident happened at approximately 8:30 a.m. while defendant Asplundh was performing tree trimming near the roadway. A work permit for the activity prohibited the work from being performed between 7:00 a.m. and 9:00 a.m. As said plaintiff Scotti was driving, the car in front of him began to slow and plaintiff came to a stop as he had observed the flagman, defendant Orlando Santiago, standing in the middle of the roadway holding a sign that said "stop". Defendant Santiago was an employee of defendant Ethan Allen, who had contracted with Central Hudson to provide flagmen to control the flow of traffic for the tree trimming at the work site. Plaintiff Scotti also observed defendant Asplundh Tree's truck performing the tree work approximately 75 to 100 feet north of where he was stopped. While stopped, Mr. Scotti felt a strong impact to the rear of his car and, later, a second impact to the front hood of his car. The first impact to Mr. Scotti's vehicle was caused by a vehicle driven by plaintiff/defendant Laura Burgher when she collided with a vehicle causing a chain reaction with two other vehicles that caused the impact to the Scotti vehicle. The second impact to the hood of Mr. Scotti's vehicle was caused when a vehicle, driven by defendant Stefan Rauschedorfer, went up an embankment on the right shoulder of Route 9W and became airborne, landing on Mr. Scotti's vehicle hood. There were five vehicles involved in the accident. These vehicles were driven, in the order of the collisions, by plaintiff Steven Scotti, Jessica Stewart Cosme, Keith Hines, plaintiff/defendant Laura Burgher and defendant Stefan Rauschedorfer. A

police report was prepared for by the Town of Saugerties Police Department and took photographs of the scene of the accident.

All of the plaintiffs allege that the defendant, Asplundh Tree was negligent in failing to properly warn of work being performed along Route 9W, failing to properly train and supervise the flagman, failing to properly mark the roadway with warning signs and/or indicators, failing to comply with the laws, rules and regulations pertaining to construction along the roadways, including violating the terms of the New York State DOT work permit and the Manual of Uniform Traffic Control Devices (MUTCD), creating a hazard, obstructing the highway and creating a dangerous condition and failing to correct it. The plaintiffs further allege that the defendants Ethan Allen and Orlando Santiago were negligent in failing to comply with New York State and Federal regulations and guidelines regarding work zones traffic control, in failing to properly warn of work being performed along Route 9W, in failing to comply with the laws, rules and regulations pertaining to construction along roadways, creating a hazard, creating a dangerous condition and failing to correct it, and, in violating the terms of New York State DOT work permit requirements.

Plaintiffs Steven Scotti and Fotini Scotti also allege that defendant Laura Burgher operated, maintained, and controlled her vehicle in a reckless, careless, negligent, unlawful and improper manner in that her vehicle was caused to strike the rear of one of the stopped vehicles behind plaintiff Steven Scotti, pushing that stopped vehicle ahead of it, and causing that vehicle to strike the rear of the Mr. Scotti's stopped vehicle. Said Plaintiffs also allege that defendant Stefan Rauschendorfer was operating the vehicle owned by defendant Deborah Quinlan with her knowledge and consent. Said plaintiffs allege that defendant Stefan Rauschendorfer operated, maintained, and controlled his vehicle in a reckless, careless, negligent, unlawful and improper manner in that his vehicle drove up the rock embankment on the eastbound shoulder of Route 9W, became airborne, and landed on the stopped vehicle of plaintiff Steven Scotti.

Alleging that he suffered a serious injury as defined by the New York Insurance Law, plaintiff Steven Scotti alleges that said collision and accident was caused by the reckless, careless, negligent, unlawful and improper conduct of all named defendants and as a result he commenced the instant personal injury action. In his second amended complaint, and, later in his bill of particulars, plaintiff Steven Scotti alleges that he was rendered sick, sore, lame and disabled,

required hospitalization, medical care and treatment, was rendered incapable of performing his usual activities or enjoying any comforts or amusements, has endured pain, discomfort, disfigurement, and disability by reason of said injuries, will require surgical intervention, will endure pain and discomfort, and be disabled for an unknown length of time in the future. Plaintiff Burgher also alleges that as a result of defendants Asplundh Tree, Central Hudson, Ethan Allen and Orlando Santiago's negligence, she, too, sustained serious injury as defined by New York State Insurance Law.

Following joinder of issue, discovery, and the filing of issue, the Asplundh Tree and Central Hudson defendants now move for summary judgment dismissing the Scotti plaintiffs' complaint and the Burgher complaint on the grounds that they were not negligent, nor the proximate cause of the alleged injury due to any negligence. The plaintiffs oppose the motion. Additionally, defendants Ethan Allen and Orlando Santiago move for summary judgment dismissing the complaints of both the Scotti plaintiffs and plaintiff Laura Burgher's on the grounds that they were not negligent or the proximate cause of the alleged injuries to the plaintiffs. The Scotti plaintiffs and the Burgher plaintiff oppose said motion. The attorney for the defendants Rauschendorfer and Quinlan submitted a response to the motion alleging that issues regarding Rauschendorfer's operation of his motor vehicle and the issues of negligence and proximate cause should be preserved for trial.

Summary judgment should be granted when it is clear that no triable issues of fact exist on a critical issue necessary for the plaintiffs' case (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hospital*, 68 NY@D 320 [1987]). In order to meet this burden when seeking dismissal of a cause of action, a party must submit evidence which negates any meritorious cause of action encompassed by the pleadings (*see Franceschi v Consolidated Rail Corp.*, 142 AD2d 915 [3<sup>rd</sup> Dept 1988]). Once the movant has made a showing, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of any material issue of fact requiring a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such *prima facie* showing requires a

denial of the motion, regardless of the sufficiency of the opposing papers (*see Smalls v AJI Industries*, 10 NY 3d 733 [2008]).

The evidence must be viewed in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference in order to determine whether there is any triable issue of fact outstanding (*see Boyce v Vazquez*, 249 AD2d 724 [3<sup>rd</sup> Dept 1998]). Where different conclusions can reasonably be drawn from the evidence, the motion should be denied (*see Sommer v Federal Signal Corp.*, 79 NY2d 555 [1992]).

Here, the Asplundh Tree and Central Hudson defendants argue that for there to be liability on the part of said defendants there must be both negligence and proximate causation of the alleged injury due to that negligence. Defendants further argue that negligence that provides only the condition and the occasion of an accident cannot be determined to be a proximate cause of the injury. Defendants argue that plaintiff Scotti and two of the other vehicles were able to come to a complete stop without incident and only the negligent driving of Laura burgher and Stefan Rauschendorfer was the cause of the accident and the plaintiff's injuries. In support of the motion and their arguments, the Asplundh Tree and Central Hudson defendants have submitted a copy of the pleadings, a copy of the plaintiff's bill of particulars, a copy of the plaintiff Steven Scotti's examination before trial testimony, a copy of the police report of the accident, a copy of non-party witness Jessica Cosme's examination before trial testimony, a copy of non-party witness Keith Hines' examination before trial testimony, a copy of plaintiff/defendant Laura Burgher's examination before trial testimony, a copy of defendant Stefan Rauschendorfer examination before trial testimony, a copy of Foreman for defendant Asplundh Tree, Terry Storer's, examination before trial testimony, a copy of defendant Orlando Santiago's examination before trial testimony, copies of various pictures depicting the scene of the accident, and, a copy of the Scotti plaintiff's expert report of John Serth, Jr., P.E.

Notably, the said defendants do not deny that the work permit, which allowed partial road closure, did not allow closure between 7 a.m. and 9 a.m. Said defendants also submit that Terry Storer, Foreman for Asplundh Tree, testified that, based upon habit and experience, he and another employee would have placed three warning signs of the partial road closure south of the work site (Asplundh Tree and Central Hudson Defendants' Exhibit "M", p. 50). It is further asserted by

defendants that Central Hudson had contracted with co-defendant Ethan Allen to provide two flaggers for the work site to assist in traffic control and defendant Orlando Santiago was one of those flaggers (Asplundh Tree and Central Hudson Defendants' Exhibit "N". p. 14-15). The defendants assert that Mr. Scotti brought his vehicle to a stop without incident at approximately 8:30 a.m. and was stopped for one to two minutes before the accident occurred (Asplundh Tree and Central Hudson Defendants' Exhibit "H" p. 49-50, 164). It is also asserted that a vehicle driven by Jessica Come was stopped behind Mr. Scotti and was then hit pretty heavily from behind by the Hines vehicle and pushed into Mr. Scotti's vehicle (Asplundh Tree and Central Hudson Defendants' Exhibit "I" p. 34, 36-37). Said defendants submit that there was a vehicle driven by non-party witness Keith Hines and he stated that he observed two warning signs of lane closure and tree work ahead and as he approached the work site, saw two stopped vehicles and then came to a stop (Asplundh Tree and Central Hudson Defendants' Exhibit "J" p. 27, 34). Mr. Hines also testified that he believed that he was stopped for almost five minutes before he was struck from behind by Laura Burgher's vehicle and that he did not hear any screeching of tires before impact (Asplundh Tree and Central Hudson Defendants' Exhibit "J" p.38, 45). He also testified that the impact to his vehicle pushed his gas tank forward and that his seat back was broken from the impact (Asplundh Tree and Central Hudson Defendants' Exhibit "J" p.47-48). The defendants assert that plaintiff/defendant Laura Burgher testified that she did not recall seeing any signs as she drove toward the work site and that she observed the car in front of her stopping abruptly before she could come to a stop and causing impact with Mr. Hines vehicle (Asplundh Tree and Central Hudson Defendants' Exhibit "K" p.59, 72). Said defendants also assert that defendant Rauschendorfer was the driver of the last car involved in the accident and that he testified that the car in front of him never slowed down before impact and that he saw no brake lights on the Burgher vehicle (Asplundh Tree and Central Hudson Defendants' Exhibit "L" p.30, 65). Mr. Rauschendorger testified that his vehicle left the roadway in an attempt to avoid striking the Burgher vehicle and then became airborne before landing on Mr. Scotti's vehicle's hood (Asplundh Tree and Central Hudson Defendants' Exhibit "J" p. 41-42). The defendants also assert that the plaintiffs' expert, John Serth, P.E., noted that there were no skid marks in the police photographs taken at the scene of the accident and that the extensive damage to the front end of

the Burgher vehicle indicated a high-speed impact(Asplundh Tree and Central Hudson Defendants' Exhibit "P"). Said defendants assert that the Serth report also indicated that there was approximately 900 to 1000 feet of visibility for northbound traffic before reaching the work site (Asplundh Tree and Central Hudson Defendants' Exhibit "P"). As a result, said defendants conclude that the time and set up of the work only provided the occasion and the condition but the accident itself was caused by the negligence of Laura Burgher's and/or Stefan Rauschendorfer's negligent operation of their vehicles. As such, the Asplundh Tree and Central Hudson defendants argue that there can be no liability against them.

As to the Ethan Allen and Orlando Santiago defendants' summary judgment motion, said defendants argue that neither Ethan Allen nor Orlando Santiago were responsible for the work zone setup, including the placement of signs and, therefore, did not cause or contribute to the subject accident. Additionally, said defendants assert that Mr. Santiago is a fully certified flagger and that there is no evidence that his flagging caused or contributed to the subject accident. They argue that as such, neither defendant breached any duty to the plaintiffs. In support of their motion, the Ethan Allen and Orlando Santiago defendants also submit a copy of the pleadings, a copy of the plaintiff's bill of particulars, a copy of the plaintiff Steven Scotti's examination before trial testimony, a copy of the police report of the accident, a copy of non-party witness Jessica Cosme's examination before trial testimony, a copy of non-party witness Keith Hines' examination before trial testimony, a copy of plaintiff/defendant Laura Burgher's examination before trial testimony, a copy of defendant Stefan Rauschendorfer examination before trial testimony, a copy of the Foreman for defendant Asplundh Tree, Terry Storer's, examination before trial testimony, a copy of defendant Orlando Santiago's examination before trial testimony. Additionally said defendants submit a copy of General Foreman for Asplundh Tree, William Stanley's, examination before trial testimony, a copy of Utility Forester for Central Hudson, Craig Ormandy's, examination before trial testimony, a copy of Safety and Risk Manager for Ethan Allen, Terrence Wilson's, examination before trial testimony, a copy of the contract between Central Hudson and Ethan Allen and a copy of Orlando Santiago's Flagger Training Certificate.

Ethan Allen and Santiago defendants submit that the deposition testimonies of plaintiff Scotti, non-party witness Keith Hines and non-party witness Jessica Cosme, all indicate that their

vehicles were properly stopped by flagman defendant Santiago before the accident (Ethan Allen and Santiago Defendants' Exhibits "L" p. 49-50, "O" p. 22, 30-32, "P" p. 27-28, 30-31). Additionally, said defendants submit that Ms. Cosme had observed at least two construction signs that indicated road work and lane closure ahead of her (Ethan Allen and Santiago Defendants' Exhibit "P" p. 22-26). The testimony of William Stanley, General Foreman for Asplundh was submitted to support their contention that the flagmen are not responsible for and do not place any road signage (Ethan Allen and Santiago Defendants' Exhibit Q" p. 17-18, 35). He also testified that Asplundh is responsible for directing and controlling their flagging activities on-site (Ethan Allen and Santiago Defendants' Exhibit Q" p. 17, 87-88, 101). Additionally, it is submitted that Mr. Stanley testified that defendant Santiago was a fully certified and trained flagman and there were no issues with his performance at the time of the accident (Ethan Allen and Santiago Defendants' Exhibit "Q" p. 100-103). Mr. Stanly also stated that when he arrived at the accident site, there was normal road signage and he inspected the work zone and determined it was setup properly. (Ethan Allen and Santiago Defendants' Exhibit "Q" p. 28, 40). Additionally, the defendants submit the deposition testimony of Terrance Wilson, Risk Manager at Ethan Allen, to attest to Mr. Santiago's training as a flagmen (Ethan Allen and Santiago Defendants' Exhibit "T"). Mr. Wilson also testified that Ethan Allen provided Central Hudson the flaggers that were working as part of the tree work being performed by Asplundh and that Orlando Santiago was one of them (Ethan Allen and Santiago Defendants' Exhibit "T" p. 12-14, 13-17). It was also submitted that Mr. Wilson testified that Mr. Santiago did not place any road signs on the date of the accident (Ethan Allen and Santiago Defendants' Exhibit "T" p. 22). Further, the testimony of Mr. Santiago was submitted that he did not set up any road signs or cones, but defendant Asplundh did (Ethan Allen and Santiago Defendants' Exhibit "U" p. 19, 32,42, 78). It is submitted that Mr. Santiago testified that at the time of the accident he was at least 150 feet away form the work zone as is required (Ethan Allen and Santiago Defendants' Exhibit "U" 44-45, 75). The deposition testimony of Craig Ormandy, Central Hudson Utility Forester, was submitted to assert that Asplundh was responsible for the direction and supervision of flaggers and that flaggers do not place any road signs or setup the work zone (Ethan Allen and Santiago Defendants' Exhibit "R" p. 86, 87). As such, the Ethan Allen and Santiago defendants assert that the evidence established that they did

not breach any duty owed to the plaintiffs or any other party. They further assert that there is no evidence that Mr. Santiago's flagging services were performed negligently or in any way contributed or caused the accident since several vehicles were stopped at his direction at the time of the accident.

In opposition to the motion, the Scotti plaintiffs submit a copy of a photograph of the placard kept in Asplundh Tree trucks showing how road signs should be set up and a copy of the Highway Work Permit issued to Central Hudson by the NYS Department of Transportation on January 20, 2016. Here, said plaintiffs rely upon the testimony of defendant Santiago that he was told that by Asplundh Foreman Terry Storer that they could not work on the 9W roadway until 9:00 a.m. (Defendant Asplundh Tree and Central Hudson Exhibit "N" p. 28). Said plaintiffs further assert that work did begin before 9:00 and Mr. Santiago testified that he had not been trained by Ethan Allen as to what to do if the person in charge of the work site did something that was unsafe (Defendant Asplundh Tree and Central Hudson Exhibit "N" p. 61). However, it is also submitted that Mr. Santiago was trained as what to do if he as a flagman felt there was a dangerous situation and that was to call the office so the situation could be assessed (Defendant Asplundh Tree and Central Hudson Exhibit "N" p. 62). Mr. Santiago also testified that no call was made (Defendant Asplundh Tree and Central Hudson Exhibit "N" p. 62). Additionally, the Scotti plaintiffs rely upon the expert report of John A. Serth, Jr., P.E.'s opinion about the October 26, 2016 accident (Defendant Asplundh Tree and Central Hudson Exhibit "P"). Mr. Serth went to the accident site on September 14, 2017. Mr. Serth opined that the NYS Department of Transportation issued a Highway Work Permit which covered the work that was being performed by Asplundh Tree on Route 9W on the day of the accident. Mr. Serth stated that, per said permit, there was to be no travel lane closures during the hours of 7:00 a.m. and 9:00 a.m. (Defendant Asplundh Tree and Central Hudson Exhibit "P"). Mr. Serth also stated that the work permit contained a diagram showing that three signs warning of road work ahead are to be spaced 500 feet apart and 500 feet before the flagger (Defendant Asplundh Tree and Central Hudson Exhibit "P"). Mr. Serth concluded that none of the collisions would have occurred if the vehicles had not been stopped by the flagger (Defendant Asplundh Tree and Central Hudson Exhibit "P").

As to plaintiff Laura Burgher's opposition, she submits, *inter alia*, a copy of her Expert

Report by Robert L. Winans, Jr., P.E. Here, it is submitted that Mr. Winans also believes that none of the collisions would have occurred if the vehicles had not been stopped by the flagger (Plaintiff Burgher's Exhibit "C"). Mr. Winans also concluded that the Asplundh Tree utilized inadequate work zone traffic controls, thereby depriving the Burgher and Rauschendorfer drivers of adequate warning relative to the unexpected conditions presented by Asplundh Tree work site (Plaintiff Burgher's Exhibit "C"). Mr. Winans also reported that Asplundh Tree failed to provide the defendant drivers with clear and ongoing guidance so that they were able to stop their cars safely (Plaintiff Burgher's Exhibit "C").

As to defendant Laura Burgher's opposition to the motion, she submits, *inter alia*, a copy of the Manual of Uniform Traffic Control Devices (MUTCD) and a copy of the certified transcript of the trial testimony of defendant Santiago, non-party witness Keith Hines and Town of Saugerties Police Department Officer David Stoutenburgh (Defendant Burgher's Exhibit "B"). During the trial at Saugerties Town Court, regarding MV tickets issued for the accident, Mr. Santiago testified that there were approximately two or three road signs placed on the roadway and that he observed a sign about a half mile from him (Defendant Burgher's Exhibit "B", p. 7, 8 17, 21). Non-party witness Mr. Hines testified that he observed two signs that were maybe 20 yards apart (Defendant Burgher's Exhibit "B" p. 24). Officer Stoutenburgh testified that he observed two bright orange signs about a half-mile apart (Defendant Burgher's Exhibit "B" p. 35). Defendant Burgher also relies upon the Serth Expert Report that the accident would not have occurred if the work had not been going on during the prohibited hours (Defendant Asplundh Tree and Central Hudson Exhibit "P"). As such, defendant Burgher asserts that the lane closure constituted a proximate cause of the accident. She also asserts that Santiago's testimony was that he was to stand 150 feet from the work zone but according to MUTCD §6E.08, he should have been standing over double that distance from the work zone ((Defendant Burgher's Exhibit "C"). Additionally, the Burgher defendant submits that Asplundh's foreman Mr. Storer did not recall where the signs were placed. Therefore, the Burger defendant submits that the record contains triable issues of fact and the summary judgment motions should be precluded.

After the Court's review of all of the submissions, clearly, there remains triable issues of fact regarding all of the defendants' actions. The submissions are not conclusive that the defendant

Asplundh Tree and Central Hudson did not create a dangerous condition by beginning the tree work prior to the work permit stating of 9:00 a.m. Additionally, there remains questions of fact as to the placement of signage and number of signs warning of the tree work on the roadway. Moreover, there remains a question of fact as to whether Mr. Santiago's actions had a contributing factor and whether he was properly trained to handle the issue of beginning work before the permitted time.

Since the Court's function is issue finding and not issue determination (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1956]) and, reviewing all of the evidence presented in the light most favorable to the opponents of the motion (*see Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]), the Court hereby determines that the plaintiffs have adequately raised triable issues of fact in their opposition to the defendants' motions for summary judgment. As there is not sufficient evidence submitted to permit this Court to conclude that defendants, under the circumstances presented and as a matter of law did not contribute or create, even in some small way, to the accident.

Consequently, in view of the Court's findings in the submissions set forth hereinabove, the Court denies the motions for summary judgment dismissing the complaints as a matter of law (*see generally Linton v Nawaz*, 14 NY3d 821, 822 [2010]). Otherwise, the Court has considered the remaining arguments and finds them either unavailing or unnecessary to reach.

Accordingly, it is

**ORDERED** that Asplundh Tree and Central Hudson Defendants' motion for summary judgement is denied, and it is further

**ORDERED** that Ethan Allen and Orlando Santiago Defendants' motion for summary judgement is denied

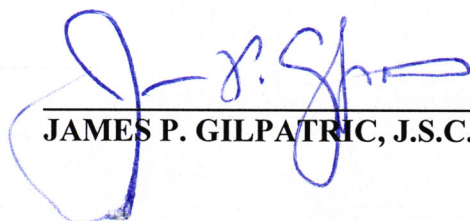
This shall constitute the decision of the Court. The signing of this decision shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions

of that rule regarding notice of entry.

**SO ORDERED!**

Dated April 8, 2021  
Kingston, New York

**ENTER,**

  
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**JAMES P. GILPATRIC, J.S.C.**

**Papers considered:** Notice of motion dated July 7, 2020; affirmation in Support by Timothy J. McHugh, Esq., with exhibits, dated July 7, 2020; notice of motion, dated July 7, 2020; affirmation in support of Matthew W. Cramer, Esq., dated July 7, 2020, with exhibits; affirmation of William K. Kerrigan, Esq., dated July 27, 2020; affirmation in opposition of Henry L. Liao, Esq., dated August 28, 2020, with exhibits; affirmation in opposition of John G. Rusk, Esq., dated September 4, 2020, with exhibits; affirmation in reply to defendant Laura Burgher's opposition of Nicholas J. Berwick, Esq., dated September 15, 2020; affirmation in reply of Nicholas J. Berwick, Esq., dated September 15, 2020; affirmation in opposition of John A. DeGasperis, Esq., dated September 21, 2020, with exhibits; affirmation in reply of Matthew W. Cramer, Esq., dated September 22, 2020; reply affirmation of Timothy J. McHugh, Esq., dated September 24, 2020.