

St-Louis v Harbeck
2022 NY Slip Op 34275(U)
December 16, 2022
Supreme Court, New York County
Docket Number: Index No. 155312/2020
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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DARNEL ST-LOUIS,

Plaintiff,

- v -

DENISE HARBECK, CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF SANITATION

Defendants.

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INDEX NO. 155312/2020

MOTION DATE 06/07/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion for JUDGMENT - SUMMARY

Plaintiff commenced this action to recover for personal injuries allegedly sustained on June 20, 2019 when a street sweeper owned by defendant the City of New York and operated by defendant Denise Harbeck "suddenly and without warning" attempted to make a U-turn and collided with plaintiff's motor vehicle (NYSCEF Doc. No. 1 [Compl. at ¶¶4, 7]).

Plaintiff now moves, pursuant to CPLR §3212, for partial summary judgment on the issue of liability as against all defendants. In support of his motion, plaintiff submits the transcript of his General Municipal Law ("GML") 50-h hearing, in which he testified, in relevant part, that he was driving west in the left lane on Chambers Street at twenty-five to thirty miles per hour when the street sweeper made a U-turn in front of him so quickly that he did not have time to avoid a collision (NYSCEF Doc. No. 16 [St. Louis GML §50-h Tr. at pp. 14-16]). He further submits a Police Accident Report which records Harbeck as stating that "she executed a U-turn when collision with [plaintiff's vehicle] occurred" (NYSCEF Doc. No. 15).

Plaintiff asserts that this evidence establishes that Harbeck violated Vehicle and Traffic Law (“VTL”) sections 1160(e) and 1128(a) in attempting to make a U-turn from the right lane when it was clearly not safe to do so and that these violations of the VTL constitute negligence per se. Plaintiff further argues that, as a matter of law, he cannot be contributorily negligent for failing to avoid the collision because he had the right of way and only seconds to react.

Defendants oppose the motion on the grounds that: (1) plaintiff has not established that Harbeck operated the street sweeper with reckless disregard for the safety of others, the relevant standard for liability here; and (2) issues of fact exist as to whether plaintiff’s negligence played any role in the collision. In connection with their opposition, defendants submit an affidavit from Harbeck, attesting as follows:

[a]t approximately 3:30 AM, I made a left turn onto Chambers Street to sweep the north side of the roadway. I swept for approximately two blocks and then pulled over on the north side of Chambers Street, approximately 50 feet from the cross street of Greenwich Street and in front of the park located east of the Borough of Manhattan Community College. I shut the DOS Broom Truck off so I could clean my mirrors and windows since it had just stopped raining. Once I completed this task, I turned the engine back on, checked all mirrors to ensure they did not move while cleaning, then checked again to ensure that it was safe for me to begin sweeping again.

At that time, I observed that the roadway was completely clear of vehicles in all directions, so I then proceeded to continue heading west on Chambers Street for approximately 25 feet before activating my left signal to switch into the left lane because at this point, the right lane turns into a right turning lane only, and it was my intention to make a left turn onto West Street. This particular point of Chambers Street has traffic heading in both directions as follows: one lane is heading east and two lanes are heading west, which includes the right turning lane.

Prior to switching lanes, all mirrors were checked by me again for safety and there were no visible vehicles driving in either direction. While in the process of switching lanes, I felt an abrupt heavy impact to the left side of the DOS Broom Truck. Upon impact, my body jerked to the left of the DOS Broom Truck, and then to the right, and I hit my head on the roof and then the left side window, which caused my glasses to fall off my face and break. Due to the sudden impact of the

collision and the abrupt jerking of my body, my foot became stuck under one of the pedals and as my body jerked to the left, the steering wheel of the DOS Broom Truck spun to the left, which made it appear as though a U-turn was occurring. This U-turn motion did not occur until after the impact of the collision.

The vehicle that collided with the DOS Broom Truck was not in my view when I checked the mirrors prior to switching lanes. The vehicle impacted the left side gutter broom which protrudes from the left side of the DOS Broom Truck. I did not see this vehicle until after the point of impact occurred.

(NYSCEF Doc. No. 26 [Harbeck Aff. at ¶¶3-4]).

Defendants also cross-moves to dismiss this action as against the New York City Department of Sanitation (“DOS”) on the grounds that it is not a suable entity.

In reply, plaintiff argues that the Court must discount Harbeck’s affidavit because it contradicts her prior statement to the police, as noted in the Police Accident Report, and is therefore impermissible.

DISCUSSION

As a preliminary matter, defendants’ cross-motion for summary judgment dismissing the New York City Department of Sanitation from this action is granted, as DOS is a non-suable entity pursuant to Chapter 17, section 396 of the New York City Charter (See Troy v City of New York, 160 AD3d 410, 411 [1st Dept 2018]). The Court now turns to the substance of plaintiff’s motion.

“[T]he 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 issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, 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” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

Plaintiff has failed to meet his burden here. While it is well-settled that a violation of the Vehicle and Traffic Law establishes negligence per se (See e.g., Castro v Hatim, 174 AD3d 464, 465 [1st Dept 2019]), this principle is inapplicable here. Rather, VTL §1103 applies. That statute provides that a vehicle “engaged in work on a highway” is exempt from the “rules of the road” and is only liable for damages caused by an act performed “in reckless disregard for the safety of others” (Deleon v New York City Sanitation Dept., 25 NY3d 1102 [2015]; VTL §1103[b]). Plaintiff’s undisputed GML §50-h testimony establishes that the street sweeper was “working as a sweeper” immediately prior to the collision (See NYSCEF Doc. No. 16 [GML §50-h at pp 14-15]) bringing it within VTL §1103 regardless of whether it was actively sweeping debris at the moment of the collision (Id., 25 NY3d 1102 [2015]; see also Matsch v Chemung County Dept. of Pub. Works, 128 AD3d 1259, 1261 [3d Dept 2015] citing Riley v County of Broome, 95 NY2d 455, 468 [2000]).

In light of the foregoing, plaintiff must, in order to carry his burden on this motion, establish that Harbeck acted with reckless disregard in moving out of the right lane, i.e., intentionally performed an act of “unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome” (Deleon v New York City Sanitation Dept., 25 NY3d 1102, 1104-05 [2015] [internal citations and quotations omitted] [emphasis added]). Plaintiff has failed, at this juncture, to show that Harbeck’s actions leading up to the collision were driven by such “conscious

indifference” rather than the “failure to see that which may be seen” in a “momentary lapse of judgment” (Spears v State, 67 Misc 3d 1231(A) [Ct Cl 2019], affd, 181 AD3d 1219 [4th Dept 2020]); compare Rockland Coaches, Inc. v. Town of Clarkstown, 49 AD3d 705 [2d Dept 2008] [jury could not rationally conclude that snowplow operator acted with reckless disregard where operator failed to see bus or believed it was far enough behind him that he could safely turn] with Holmes v Fiore, 52 Misc 3d 171, 178-79 [Sup Ct, Oneida County 2014], affd, 136 AD3d 1326 [4th Dept 2016] [issues of fact as to whether defendant driver acted with reckless disregard in driving through two red lights while his view was obstructed]). As this dispositive question of fact remain unresolved, plaintiff’s motion for summary judgment must be denied (See Deleon v New York City Sanitation Dept., 25 NY3d 1102 [2015]).

In light of the foregoing, it is

ORDERED that plaintiff’s motion for summary judgment on the issue of liability is denied; and it is further

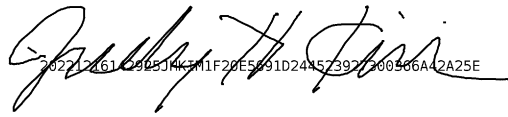
ORDERED that defendants’ motion for summary judgment to dismiss this action as against defendant New York City Department of Sanitation is granted and this action is dismissed as against defendant New York City Department of Sanitation; and it is further

ORDERED that within twenty days from entry of this decision and order, counsel for the City of New York shall serve a copy of this order with notice of entry on plaintiff, as well as the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk’s Office (60 Centre St., Rm. 119), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on

Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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12/16/2022

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE