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| <b>Valerio v Doulani</b>                                                                                                                                                                                                       |
| 2023 NY Slip Op 35157(U)                                                                                                                                                                                                       |
| June 5, 2023                                                                                                                                                                                                                   |
| Supreme Court, Richmond County                                                                                                                                                                                                 |
| Docket Number: Index No. 150178/2020                                                                                                                                                                                           |
| Judge: Orlando Marrazzo, Jr.                                                                                                                                                                                                   |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND-----X  
LOUISE VALERIO,

Plaintiff,

- against -

JOSEPH DOULANI, MOHAMMED SAFA, and  
CITY OF NEW YORK,

Defendants. -----X

JAS  
PART 26, C2Present:  
Hon. Orlando Marrazzo, Jr.

DECISION and ORDER

Index No. 150178/2020  
Motion No. 001

The papers numbered NYSCEF Documents "169" to "225" were marked fully submitted on the 22<sup>nd</sup> day of March, 2023.

Upon the foregoing papers, the motion of defendant The City of New York (hereinafter "the City") to dismiss the complaint and all cross claims against it pursuant to CPLR §3211 and/or CPLR §3212 is denied.

Plaintiff Louise Valerio commenced this action to recover damages for personal injuries she sustained in a motor vehicle accident on June 6, 2019, at the intersection of Natick Street and Kensico Street in Staten Island, New York. At the time, defendant Mohammed Safa was operating a vehicle owned by defendant Joseph Doulani. Mr. Safa was travelling westbound on Natick Street when he failed to stop at the Stop sign that controlled traffic at the intersection. A "Stop Ahead" sign was posted on Natick Street approximately 230 feet ahead of the stop sign. Defendant alleges he did not see either of the signs because they were both obstructed by trees. Mr. Safa's motor vehicle collided with plaintiff's vehicle as she was travelling on Kensico Street and entered the intersection. Kensico Street was not controlled by a stop sign.

In moving for summary judgment, the City maintains it lacked actual or constructive notice of trees that allegedly obstructed the traffic control signs on Natick Street. In the first place, the

City disputes that the Stop sign and the "Stop Ahead" sign was obstructed by overgrown trees. Movant relies on photographic images from the so-called "Cyclomedia Street Smart View" which are incorporated into The New York City Department of Parks and Recreation's Forestry Management computer system. A Parks Department Administrative Staff Analyst, Dina Orlando, conducted a search of the Cyclomedia Street Smart Views which are dated photographic images of City streets. Ms. Orlando found four photographs dated June 20, 2017, March 16, 2018, August 22, 2018 and May 31, 2019, depicting Natick Street where it approaches the intersection on Kensico Street. Defendant contends that the images unambiguously show that the stop sign and the "Stop Ahead" sign were not obstructed by trees six days prior to the accident.

Moreover, the City points out that Ms. Orlando was previously employed as NYC Parks Forester in charge of block-pruning inspections and contracts. At her deposition, she testified that on January 5, 2016, Beucler Tree Experts pruned the tree that allegedly obstructed the Stop sign on Natick Street. Ms. Orlando inspected and approved Beucler's pruning work.

To demonstrate the lack of actual or constructive notice of a hazardous condition at the intersection, the City produced the results of various record searches performed by employees of NYC Parks Department Forestry. Anita Dyne-Eshun, Principal Administrative Associate, performed a search for records and electronic files pertaining to complaints, inspections and work orders for the six-year period prior to the accident. Ms. Dyne-Eshun did not locate any records relating to the intersection at issue. Yelena Bogdanova, a paralegal, did not find any installation records, complaints, service requests and work orders for the six-year period prior to the accident.

The City further submits the affidavits of three employees of the NYC Department of Transportation ("DOT") who conducted a search and found no complaints concerning the stop sign and the "Stop Ahead" sign. Although DOT's certified records reveal that a total of seven motor vehicle accidents occurred at the intersection during the ten-year period preceding the

accident, the City points out the reports do not indicate that the stop sign or the "Stop Ahead" were obstructed.

As for plaintiff's claim of a roadway design defect, defendant maintains she fails to rebut the findings of Kevin Kusmick, P.E., who was employed by the NYC Department of Transportation ("DOT") as a civil engineer at the time, and Anthony Yodice, DOT's Borough's Deputy Engineer. Both witnesses were deposed and testified that the City DOT complied with the applicable 2009 Federal Manual on Uniform Traffic Control Devices which sets for the legal requirements for roadway stop markings and signage. Google photos taken in September 2012 and June 2018 clearly show a stop marking on the roadway at the corner of Natick Street where the accident took place.

Based on the foregoing submissions, movant argues that the sole proximate cause of plaintiff's injuries was Mr. Safa's failure to comply with New York's Vehicle and Traffic Law §1140, §1142(a), §1172(a), and the New York City Department of Transportation Traffic Rules §4-02(a) and §4-02(d). The City's evidence demonstrates that the traffic control signs in question were not obstructed at the time of plaintiff's accident. Mr. Safa disobeyed two traffic control signs that clearly indicated he was required to stop his vehicle at the intersection on Natick Street; he also neglected to keep a proper look-out for other vehicles approaching or entering the intersection.

The City has met its initial burden of establishing its prima facie entitlement to summary judgment dismissing the complaint by tendering sufficient evidence demonstrating the absence of any material issues of fact (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden shifts to plaintiff to defeat movant's prima facie showing.

In opposition to the City's motion, plaintiff submits the affidavit dated March 1, 2023, of Louis A. Valerio. He attests that several days after the June 6, 2019 accident, he took three

photographs that truly and accurately depict the intersection and surrounding area of Natick Street and Kensico Street at that time. The photographs are marked as Plaintiff's Exhibits "5", "6" and "9". Mr. Valerio attests that Plaintiff's Exhibit "5" depicts a tree with leaves blocking the stop sign for traffic on Natick Street; Plaintiff's Exhibits "6" and "9" depicts a tree with leaves blocking the "Stop Ahead" sign on Natick Street.

Plaintiff also produces the affidavit of A. Wayne Cahilly, an I.S.A. Certified Arborist. Mr. Cahilly reviewed the relevant photographs marked into evidence as Plaintiff's Exhibits "2", "3", "4", "5", "6" and "9". He also reviewed four Street Smart View screenshots provided by the City in response to discovery demands. The screenshots were taken on June 20, 2017, March 16, 2018, August 22, 2018 and May 31, 2019. Plaintiff's expert attests they clearly show the stop sign "significantly" blocked by the red maple tree at the intersection. Mr. Cahilly points out that Plaintiff's Exhibit "5" which was taken several days after the accident, also shows the red maple tree blocking the Stop sign. As for the "Stop Ahead" sign, Mr. Cahilly attests that the photographs marked as Plaintiff's Exhibits "6" and "9" depict a silver maple tree blocking that sign on the westbound side of Natick Street. He points out that the photographs submitted by the City are deceptive because they are taken too close to the signs, and they do not accurately represent Mr. Safa's view of the roadway as he approached the intersection.

Plaintiff's expert found that the red maple tree obstructed Mr. Safa's view of the stop sign because it was not pruned in a proper manner that would prevent the branches from blocking the sign in the future. He indicates the correct method requires removal of a vast majority of branches at or near the height of the stop sign. He concludes that the City failed to accomplish this task when the tree was pruned on January 5, 2016. Mr. Cahilly points out that the June 20, 2017 Street Smart screenshot clearly shows the essential branches were not removed. It is the expert's opinion that

the tree pruning was inadequate to prevent the obstruction of the stop sign at the time the accident occurred.

The Court finds that plaintiff has met her burden to defeat summary judgment by producing evidentiary proof sufficient to raise material issues of fact, *inter alia*, as to whether the traffic control signs on Natick Street were obstructed by overgrown trees, and whether the City had actual or constructive notice of any such hazard (see *Alvarez v. Prospect Hosp.*, 68 NY2d at 324; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]; CPLR §3212[b]).

Accordingly, it is

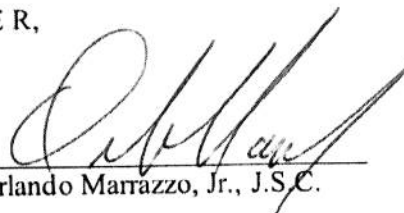
ORDERED, the motion of defendant The City of New York to dismiss the complaint and all cross claims against it pursuant to CPLR §3211 and/or CPLR §3212 is denied; and it is further

ORDERED, the Clerk shall mark his records accordingly.

Dated:

6/5/2023

ENTER,



Hon. Orlando Marrazzo, Jr., J.S.C.

Hon. Orlando Marrazzo, Jr.  
Supreme Court Justice