

Porter v V. Garofalo Carting Inc.
2024 NY Slip Op 35664(U)
October 17, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 620861/2018
Judge: Joseph Farneti
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 620861/2018CAL. No. 202400162MVSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY**PRESENT:**Hon. JOSEPH FARNETI
Acting Justice of the Supreme CourtMOTION DATE 4/4/24
ADJ. DATE 6/20/24
Mot. Seq. # 003 MotD

BLAISE PORTER,

Plaintiff,

- against -

V. GAROFALO CARTING INC., JOSE
MAURICIO CRUZ, MARLON A. JOVEL
RODRIGUEZ and PUBLIC
ADMINISTRATOR OF SUFFOLK COUNTY
AS ADMINISTRATOR OF THE ESTATE OF
MARLON A. JOVEL RODRIGUEZ,

Defendants.

THE BONGIORNO LAW FIRM, PLLC
Attorney for Plaintiff
1415 Kellum Place, Suite 205
Garden City, New York 11530COZEN O'CONNOR
Attorney for Defendants
3 World Trade Center
175 Greenwich Street
New York, New York 10007

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendants, filed March 1, 2024; Notice of Cross-Motion and supporting papers ____; Answering Affidavits and supporting papers by plaintiff, filed May 16, 2024; Replying Affidavits and supporting papers by defendants, filed June 18, 2024; Other ____; it is

ORDERED that the motion by defendants for an order granting summary judgment in their favor is granted only to the extent set forth herein and is otherwise denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff Blaise Porter in a motor vehicle accident which occurred on September 12, 2018, on Long Island Avenue, near its intersection with Gerard Road, in the Town of Brookhaven, New York. The accident allegedly occurred when the sanitation truck owned by defendant V. Garofalo Carting, Inc. and operated by defendant Jose Mauricio Cruz was stopped on Long Island Avenue, blocking the road. Plaintiff claims that as a result of the positioning of the sanitation truck in the roadway, the motorcycle he was operating "was caused to be in a collision" with defendant Marlon A. Jovel Rodriguez, a sanitation worker

Porter v V. Garofalo Carting, Inc.
Index No. 620861/2018
Page 2

crossing the road to return to the truck at the time of the accident. Plaintiff alleges that defendants were negligent in the ownership and operation of the sanitation truck, and in violating numerous provisions of the Vehicle and Traffic Law, including sections 1126, 1128, 1152, 1156(b), 1201, 1202, 1203 and 1212. In addition, plaintiff brings claims against defendant V. Garofalo Carting, Inc. based on respondeat superior and for negligent hiring and retention.

Defendants now move for summary judgment dismissing the complaint against them on the grounds that the protections of Vehicle and Traffic Law § 1103 (b), which provides that a driver of a “hazard vehicle,” including a sanitation truck, is protected from liability if the vehicle was “actually engaged in work on a highway,” apply to defendant Cruz’s operation of the recycling truck and defendant Jovel’s crossing the road to reenter the sanitation truck. Defendants further argue that plaintiff was the sole proximate cause of the accident. In support of their motion, defendants submit, among other things, the pleadings, plaintiff’s deposition transcript, and the deposition transcript of Cruz. The court notes that the deposition testimony of nonparty witnesses submitted by defendants in support of their motion, are not in admissible form, as all are unsigned and unsworn, and therefore such testimony was not considered (*see McDonald v Mauss*, 38 AD3d 727, 832 NYS2d 291 [2d Dept 2007]). Plaintiff opposes the motion, arguing that Vehicle and Traffic Law § 1103 (b) is inapplicable, as Jovel was not “actually engaged in work on a highway” at the time of the incident, and that there are issues of fact as to whether he was the sole proximate cause of the accident.

“Vehicle and Traffic Law § 1103 (b) provides that all vehicles, regardless of their classification, are excused from the rules of the road when ‘actually engaged in work on a highway’” (*Qosaj v Village of Sleepy Hollow*, 223 AD3d 29, 32, 201 NYS3d 226 [2d Dept 2023], quoting *Riley v County of Broome*, 95 NY2d 455, 464, 719 NYS2d 623 [2000]), and imposes on such vehicles a recklessness standard of care ((*Deleon v New York City Sanitation Dept.*, 25 NY3d 1102, 1105, 14 NYS3d 280 [2015])). This exemption “turns on the nature of the work being performed” (*Riley v County of Broome*, 95 NY2d 455, 464, 719 NYS2d 623), and is limited to vehicles performing “‘construction, repair, maintenance or similar work’” (*Guzman v Bowen*, 38 AD3d 837, 837, 833 NYS2d 548 [2d Dept 2007]). As municipal refuse collection does not involve building, repairing, or maintaining highways, painting pavement markings, removing snow, sanding the pavement, or doing other similar work and is “a task which one would anticipate could be accomplished while obeying the rules of the road” (*Rouse v City of Syracuse Dept. of Pub Works*, 229 Ad3d 1189, 1190, 215 NYS3d 843 [4th Dept 2024], quoting *Qosaj v Village of Sleepy Hollow*, 223 AD3d 29, 35, 201 NYS3d 226), those portions of section 1103 (b) that exempt vehicles from the rules of the road do not apply to such work. The court in *Rouse* found that while amendments to the Vehicle and Traffic Law broadened the definition of “hazard vehicle” to include waste collection vehicles, it did not broaden the scope of work that constitutes “engaging in work on a highway” (*Rouse v City of Syracuse Dept. of Pub Works*, 229 Ad3d 1189, 1190, 215 NYS3d 843). However, with respect to hazard vehicles, Vehicle and Traffic Law § 1103 (b) provides that section 1202 (a)—which regulates stopping, standing, and parking—does not apply to “hazard vehicles while actually engaged in hazardous operation on or adjacent to a highway” (*Rouse v City of Syracuse Dept. of Pub Works*, 229 Ad3d 1189, 1190, 215 NYS3d 843, citing *Riley v County of Broome*, 95 NY2d 455, 462, 719 NYS2d 623).

Porter v V. Garofalo Carting, Inc.

Index No. 620861/2018

Page 3

Defendants have established that the sanitation truck was a “hazard vehicle,” as it was a waste collection vehicle engaged in the collection of recyclable material on a public highway at the time of the accident (*see* Vehicle and Traffic Law § 117-a; *Rouse v City of Syracuse Dept. of Pub Works*, 229 Ad3d 1189, 215 NYS3d 843). Defendants further established that the sanitation truck was actually engaged in a hazardous operation on a highway (*see* Vehicle and Traffic Law § 117-b; *see generally Green v Covington*, 299 AD2d 636, 750 NYS2d 162 [3d Dept 2002]). As such, section 1103 (b) and its attendant recklessness standard applies to Cruz’s operation of the sanitation truck as to plaintiff’s allegations of violations of section 1202 (a). The imposition of liability under the recklessness standard, which the Court of Appeals has described as a “minimum standard of care” (*Deleon v New York City Sanitation Dept.*, 25 NY3d 1102, 1106, 14 NYS3d 280; *see Riley v County of Broome*, 95 NY2d 455, 466, 719 NYS2d 623 [2000]), “demands more than a showing of a lack of ‘due care under the circumstances’—the showing typically associated with ordinary negligence claims” (*Saarinen v. Kerr*, 84 NY2d 494, 501, 620 NYS2d 297 [1994]). Instead, “liability under [the recklessness] standard is established upon a showing that the covered vehicle’s operator has intentionally done an act of an 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, 1105, 14 NYS3d 280; *see Riley v County of Broome*, 95 NY2d 455, 466, 719 NYS2d 623). Defendants have met their burden to show that Cruz did not act in reckless disregard for the safety of others in his operation of the sanitation truck. In opposition, plaintiff fails to raise an issue of fact.

However, Vehicle and Traffic Law § 1103 (b) does not shield defendants from the allegations of negligence and plaintiff’s remaining claims, as they have failed to show that they were engaged in work on a highway at the time of the accident (*see Rouse v City of Syracuse Dept. of Pub Works*, 229 Ad3d 1189, 215 NYS3d 843; *Qosaj v Village of Sleepy Hollow*, 223 AD3d 29, 32, 201 NYS3d 226; *Guzman v Bowen*, 38 AD3d 837, 833 NYS2d 548). Therefore, an ordinary negligence standard applies to their alleged conduct. A defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident (*Angelastro v Dyer*, 230 AD3d 627, 215 NYS3d 525 [2d Dept 2024]; *Sage v Taylor*, 195 AD3d 971, 146 NYS3d 496 [2d Dept 2021]; *Matias v Bello*, 165 AD3d 642, 643, 84 NYS3d 551 [2d Dept 2018]). There can be more than one proximate cause of an accident and, generally, it is for the trier of fact to determine the issue of proximate cause (*see Gonzalez v Gonzalez*, 212 AD3d 716, 183 NYS3d 113 [2d Dept 2023]; *Blake v Francis*, 205 AD3d 671, 165 NYS3d 754 [2d Dept 2022]; *Sage v Taylor*, 195 AD3d 971, 146 NYS3d 496; *Matias v Bello*, 165 AD3d 642, 643, 84 NYS3d 551).

Defendants failed to establish *prima facie* that plaintiff was the sole proximate cause of the accident (*see Strassburg v Merchants Automotive Group, Inc.*, 203 AD3d 1735, 166 NYS3d 87; *Uhteg v Kendra*, 200 AD3d 1695, 161 NYS3d 596; *Dunkle v Vakoulis*, 173 AD3d 1662, 99 NYS3d 901 [4th Dept 2019]; *Ruocco v Mulhall*, 281 AD2d 406, 721 NYS2d 286 [2d Dept 2001]). Cruz, who witnessed the accident through the side view mirror of the sanitation truck, testified that Jovel did not look towards westbound traffic before crossing the road back to the truck. Cruz further testified that Jovel was running across the road when he sounded the air horn of the sanitation truck for the third time, and that Jovel stopped and “froze” in the westbound lane. According to Cruz’s testimony, Jovel was facing

Porter v V. Garofalo Carting, Inc.
Index No. 620861/2018
Page 4

plaintiff's approaching motorcycle for several seconds prior to the accident. In addition, defendants' submissions show that there are issues of fact with respect to what portion of the sanitation truck was in the westbound lane of travel at the time of the accident, whether the hazard lights were activated, and whether Cruz sounded the air horn just prior to the accident. Therefore, a reasonable juror could find that defendants failed to exercise due care to avoid the accident and that their actions were a proximate cause of the accident. The court has considered defendants' remaining arguments and has found them to be without merit.

Accordingly, defendants' motion for summary judgment in their favor is granted only as to plaintiff's claimed violations of Vehicle and Traffic Law section 1202 (a), and is otherwise denied.

Dated: 10/17/2024


A.J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION