

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

GEORGINA LORCA, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 00C-09-224 JRS  
 )  
 )  
 WILLIAM D. GREEN, )  
 )  
 Defendant. )

Date Submitted: September 25, 2001  
Date Decided: December 20, 2001

*Upon Consideration of  
Defendant's Motion for Summary Judgment*  
**DENIED.**

**ORDER**

This 20<sup>th</sup> day of December, 2001, upon consideration of Defendant's Motion for Summary Judgment and the Response thereto, it appears to the Court that:

1. In the early morning of May 1, 1999, Plaintiff, Georgina Lorca ("Ms. Lorca"), was struck by an automobile driven by Defendant, William D. Green ("Mr. Green"), as she crossed Delaware Avenue approximately 40 feet from the intersection

of Delaware Avenue and Clayton Street. Ms. Lorca commenced this litigation to recover compensatory damages for personal injuries that she sustained as a proximate result of Mr. Green's negligence. Mr. Green has moved for summary judgment. He argues that, despite adequate time to do so, Ms. Lorca has failed to develop any facts to establish negligence on his part. In addition, Mr. Green asserts that Ms. Lorca's own negligence caused the accident and that her negligence exceeds any negligence on his part thereby barring her claim.<sup>1</sup>

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<sup>1</sup>10 *Del.C.* §8132.

2. In considering a motion for summary judgment, the Court is required to examine the record, all pleadings, affidavits and discovery.<sup>2</sup> The Court must view this evidence in the light most favorable to the non-moving party.<sup>3</sup> Summary judgment may be granted only when the Court's review of the record reveals that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.<sup>4</sup> The moving party bears the initial burden of illustrating the absence of a material factual dispute.<sup>5</sup> Then, the burden shifts to the non-moving party to demonstrate that there are material issue of fact that remain in dispute.<sup>6</sup>

3. Issues of negligence generally are not susceptible of resolution through summary judgment.<sup>7</sup> "The moving party for summary judgment in a negligence action must produce evidence demonstrating that there is no genuine issue of material fact relating to the question of negligence."<sup>8</sup> Needless to say, summary judgment is

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<sup>2</sup>*Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, Del. Super., 312 A.2d 322, 325 (1973).

<sup>3</sup>See *United Vanguard Fund, Inc. v. Takecare, Inc.*, Del. Supr., 693 A.2d 1076, 1079 (1997); *Brzoska v. Olson*, Del. Supr., 668 A.2d 1355, 1364 (1995).

<sup>4</sup>*Dale v. Town of Elsmere*, Del. Supr., 702 A.2d 1219, 1221 (1997).

<sup>5</sup>*Moore v. Sizemore*, Del. Supr., 405 A.2d 679, 680 (1979)(citing *Ebersole v. Lowengrub*, Del. Supr., 180 A.2d 467 (1962)).

<sup>6</sup>*Brzoska v. Olson*, Del. Supr., 668 A.2d 1355, 1364 (1995).

<sup>7</sup>*Walsh v. Pasco*, Del. Super., C.A. No. 82C-JA-047, 1985 WL 189239, Gebelein, J. (Aug. 8, 1985)(Letter Op. at \*1)(citing *Ebersole v. Lowengrub*, Del. Supr., 180 A.2d 467 (1962)).

<sup>8</sup>*Dreher v. Kennard Pyle Co.*, Del. Supr., No. 258, 1985, 1985 WL 14160, (Dec. 19,

not appropriate when issues of fact relating to the defendant's negligence remain unresolved in the record.<sup>9</sup> Moreover, "the determination of the respective degrees of negligence attributable to the parties usually presents a question of fact for the jury."<sup>10</sup>

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1985)(ORDER at \*1)(citing *Howard v. Food Fair Stores, New Castle, Inc.*, Del. Supr., 201 A.2d 638, 640 (1964)).

<sup>9</sup>*Id.*

<sup>10</sup>*Jackson v. Thompson*, Del. Super., C.A. No. 99C-120-016, Witham, J. (Oct. 12, 2000)(ORDER at 3)(citing *Triebel v. Sabo*, Del. Supr. 714 A.2d 742, 745 (1998)).

4. In viewing the facts in the light most favorable to Ms. Lorca, it appears that at approximately 1:30 a.m. on the morning of May 1, 1999, Ms. Lorca and some friends left the Palms nightclub on Delaware Avenue. Ms. Lorca accepted a ride home with a friend whose car was parked on the opposite side of Delaware Avenue. Instead of crossing at the crosswalk at the intersection of Clayton Street and Delaware Avenue, Ms. Lorca crossed Delaware Avenue some distance away from the crosswalk.<sup>11</sup> She entered the street from between two parked cars on Delaware Avenue.<sup>12</sup> Ms. Lorca looked right and left before she began to cross Delaware Avenue.<sup>13</sup> When she looked left, she did not see Mr. Green's vehicle.<sup>14</sup> She proceeded across the northbound lane of Delaware Avenue and was struck by Mr. Green's vehicle in his lane of travel.<sup>15</sup> Mr. Green acknowledged that he had seen Ms. Lorca standing between the two parked cars along the northbound side of Delaware Avenue seconds before his vehicle struck her.<sup>16</sup> He stated that he is familiar with this

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<sup>11</sup>Pl. Depo. at 16 (June 19, 2001).

<sup>12</sup>*Id.* at 18.

<sup>13</sup>*Id.* at 22, 23; Arb. Tr. at 55, 56 (March 5, 2001). Mr. Green testified that Ms. Lorca did not look before entering the street. Arb. Tr. at 39, 43 (March 5, 2001).

<sup>14</sup>Arb. Tr. at 55, 56 (March 5, 2001).

<sup>15</sup>*Id.* at 43; Pl. Depo. at 26-27 (June 19, 2001).

<sup>16</sup>Arb. Tr. at 37-38 (March 5, 2001).

area of Delaware Avenue and is aware that at that time of the evening there are many people in the area because the clubs are closing.<sup>17</sup> Mr. Green agrees that it was a clear evening and that his view of the road was unobstructed.<sup>18</sup> He acknowledged that he had consumed alcohol prior to the accident, a fact he claims to have admitted to the investigating police officer.<sup>19</sup> The police officer testified that Mr. Green never informed him that he had consumed alcohol that evening.<sup>20</sup> A witness to the accident estimates that Mr. Green was traveling at approximately 35 miles per hour.<sup>21</sup> She states that Mr. Green was driving on Clayton Street and made a left-hand turn onto Delaware Avenue as Ms. Lorca was crossing the street.<sup>22</sup> Mr. Green asserts that he

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<sup>17</sup>*Id.* at 36.

<sup>18</sup>*Id.* at 35.

<sup>19</sup>*Id.* at 39-40.

<sup>20</sup>Arb. Tr. at 30 (March 5, 2001).

<sup>21</sup>*Id.* at 6. Mr. Green estimates that he was traveling between 15-20 miles per hour. *Id.* at 42.

<sup>22</sup>*Id.* at 6.

was not traveling on Clayton Street, but that he had been driving on Delaware Avenue the entire time.<sup>23</sup>

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<sup>23</sup>*Id.* at 35-6, 41.

5. The Court is satisfied that there are unresolved issues of fact regarding the relative degrees of negligence of Mr. Green and of Ms. Lorca that make this case inappropriate for summary judgment. Questions remain regarding whether Ms. Lorca kept a proper lookout in accordance with her common law duty and whether she complied with her statutory duties with respect to crossing a roadway outside of a crosswalk.<sup>24</sup> Questions also remain regarding whether Mr. Green operated his vehicle in an careless or inattentive manner.<sup>25</sup> These questions of fact are best left for a jury to decide at a trial where “all testimony will be heard and all of the surrounding circumstances will be established upon complete proof.”<sup>26</sup> In addition, this case calls for the allocation of fault among the parties--a determination best left for the trier of fact. Accordingly, the Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

Judge Joseph R. Slights, III

Original to Prothonotary

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<sup>24</sup>*See* 21 *Del.C.* §4143.

<sup>25</sup>*See* 21 *Del.C.* §4176.

<sup>26</sup>*Burge v. Chandler*, Del. Super., C.A. No. 790, 1966, 1968 WL 90866, Stiftel, P.J., (April 19, 1968)(Letter Op. at \*2).