

McClide v Yonkers Racing Corp.
2019 NY Slip Op 31569(U)
June 3, 2019
Supreme Court, New York County
Docket Number: 150308/2016
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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JERALDINE MCCLIDE, MILDRED BROWN,

Plaintiff,

- v -

YONKERS RACING CORP., PARK WOO YOUNG, EDWARD WATSON

Defendant.

INDEX NO. 150308/2016

MOTION DATE 03/03/2019

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

Upon the foregoing documents, it is ORDERED that plaintiffs' motion for summary judgment, pursuant to CPLR 3212, is granted on the issue of liability against defendants. Plaintiffs Jeraldine McClide and Mildred Brown's motion contends that on March 21, 2015 at Empire City Casino located at 810 Yonkers Avenue, County of Westchester, City of Yonkers, and State of New York, both plaintiffs were attempting to cross several lanes of traffic in a valet area outside of the Casino when they were struck by a vehicle owned by defendant Park Woo Young and operated by defendant Edward Watson, a valet who was employed by defendant Yonkers Racing Corporation, d/b/a Empire City Casino ("YRC). Defendants oppose the motion.

"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 eliminate any material issues of fact from the case" (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his

failure ... to do [so]" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]). Plaintiffs have made out a prima facie case of negligence, and the burden shifts to defendants to raise a triable issue of fact.

Violation of the Vehicle and Traffic Law ("VTL") constitutes negligence per se (*See Flores v City of New York*, 66 AD3d 599 [1st Dep't 2009]). VTL § 1146 places a duty upon motorists to exercise due care in their operation of a motor vehicle and avoid colliding into any pedestrian. Pursuant to VTL § 338, "every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle . . . by any person using or operating the same with the permission, express or implied, of such owner."

In support of their motion plaintiffs attach the deposition of both plaintiffs, the deposition of defendant driver Edward R. Watson, a copy of the Certified Police Report, surveillance video footage of the accident at issue (Mot, Exh E, F, G, G1, & J). Plaintiff Jeraldine McClide testified at deposition that both plaintiffs were walking in front of a stopped vehicle in the valet parking area of the casino towards the entrance of the building when said vehicle struck plaintiffs (Exh E at 37-40). Defendant Watson testified that while under the employment of Empire City as a valet parking attendant, he took possession of a vehicle owned by Park Woo Young, and did not see plaintiffs walking in front of the vehicle, until said vehicle struck plaintiffs (Exh, G at 27, ¶ 5-20). The vehicle in question was equipped with handicapped equipment, for which defendant Watson did not have training, and did not notice in the vehicle at the time of the accident (*id.* at 22-23, 37-38).

Defendant Watson further testified that there was no designated walk area for pedestrians to enter the casino and that valet drivers were not given directions in terms of pedestrian safety

(*id.* at 50-51). Defendant Park, who maintains the vehicle, testified at deposition that the vehicle is equipped with handicapped controls but that the gas, gears, and brake still function normally and that anyone can drive the vehicle (*id.*, Exh H at 16, 44-45). Park also testified that when he gave the key to the valet that the vehicle was in park and that the vehicle cannot move while the gear shift is in park (*id.*, at 43). Plaintiffs further attach the Certified Police Accident Report which contains a statement against interest by defendant Watson who told the reporting police officer that he put the vehicle into drive, did not know how to operate the vehicle, saw plaintiffs crossing in front of the vehicle and was unable to stop the vehicle in time before it struck plaintiffs (*id.*, Exh J).

The Court has examined the video footage of the accident at issue and notes that said footage clearly shows that the vehicle at issue was at a complete stop when plaintiffs began walking in front of it. Once plaintiffs began to cross in front of the vehicle the footage shows the vehicle suddenly accelerating and violently striking plaintiffs. Plaintiffs have made a prima facie showing of entitlement to judgment as a matter of law and the burden shifts to defendants to raise an issue of fact.

In opposition, defendants fail to raise a genuine issue of fact. Defendants' assertions that defendant Watson was reasonable in his operation of the vehicle and that plaintiffs "popped out in front of the car" is a feigned issue of fact belied by the video footage, deposition of the parties, and the Police Report. The Court finds that all named defendants are liable for the accident at issue and that plaintiffs are free from any comparative liability. Plaintiffs' motion is granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on the issue of liability as against defendants is granted; and it is further

ORDERED that within 30 days of entry, plaintiffs shall serve a copy of this Decision/Order upon defendants with notice of entry.

This constitutes the Decision/Order of the Court.

6/3/2019

DATE

ADAM SILVERA, J.S.C.

**HON. ADAM SILVERA
J.S.C.**

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE