

Torts and Civil Practice

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Trooper Entitled to Qualified Immunity

Green v State of New York (Cardona, P.J., 507302 [3/1810])

Claimant brought an action against the State of New York to recover for injuries he sustained when a trooper car being driven by State Trooper Peters struck his vehicle. The accident occurred while Trooper Peters was attempting a U-turn to effectuate a traffic stop on a tractor trailer and claimant's vehicle hit the trooper's car in the side. Following a bench trial, the Court found claimant and Peters each 50% liable and held Peters was not entitled to qualified immunity under VTL § 1104 (e) as Peters' conduct was reckless. On Appeal, the Court reversed Supreme Court's finding that Trooper Peters was reckless and therefore held Peters was entitled to the protections of VTL § 1104 (e). The Court found Peters took precautions before attempting his U-turn, which evidenced due care under the circumstances to protect other motorists on the roadway, such as stopping his vehicle in the breakdown lane, activating his left turn signal, and looking for vehicles traveling in both directions multiple times before attempting the U-turn. While Trooper Peters mistakenly believed claimant's car was stopped prior to attempting his U-turn, this was just a momentary lapse in judgment by Peters and not reckless disregard for the safety of others.

Labor Law

Fallon et al. v Flach Development & Realty, Inc. (Malone, Jr., J., 507375 [3/11/10])

Plaintiff was injured while volunteering to make improvements to a warehouse owned by defendant Flach. A fire company, of which plaintiff was a volunteer firefighter member, was temporarily storing some its fire vehicles in defendant's warehouse and the fire company asked for volunteers to install plastic sheeting in the warehouse to protect the vehicles from freezing during storage. Plaintiff volunteer to help install the sheeting and while ascending a ladder, the ladder collapsed, causing him to fall and sustain injuries. Plaintiff commenced Labor Law § 200, 240 (1) and 241 (6) actions against defendant and Supreme Court granted defendant's motion for summary judgment to dismiss the complaint. In affirming the dismissal, the Court reminds us that the purpose of the Labor Law is to protect hired workers, not volunteers who perform services gratuitously. In this

case, there was no evidence that plaintiff was anything but a volunteer in performing the work which led to his injury.

Wheeler et al. v Citizens Telecommunications Co. of New York, Inc.; New York State Electric and Gas (Malone, Jr., J., 507821 [3/4/10])

This appeal involves the dismissal of a third-party contribution claim brought by defendant Citizens against third-party defendant NYSEG. NYSEG owned a utility pole that Citizens leased space on for its wires. NYSEG identified the pole as defective and entered into an agreement with Citizen for joint ownership of a new pole to replace the old defective one. NYSEG installed the new pole and moved its wires from the defective pole to the new pole and, thereafter, notified Citizens it could transfer its own wires. Citizens contracted with plaintiff's employer to transfer the wires and plaintiff was injured when he climbed the defective pole to effectuate the transfer. As the admitted owner of the defective pole, NYSEG owed a duty to warn linemen such as plaintiff of the defective condition of the pole. In reversing Supreme Court's dismissal of the third-party contribution claim against NYSEG, the Court found questions of fact as to NYSEG's fault. NYSEG had specific information as to the nature of the defect and structural integrity of the pole but failed to produce any evidence establishing they conveyed this information to anyone that may work on the defective pole.

Roadway Safety and Signage

Ferguson v Sheahan, et al. and Town of Ithaca (Spain, J. 506658 [3/4/10])

Three rear-seat passengers of a Ford Bronco were ejected from the vehicle and sustained severe personal injuries after the Bronco skidded within a sharp curve of a roadway, went off the roadway, traveled over an earthen berm, and fell into a deep gorge. The plaintiffs brought actions against the Town, as owners of the roadway, for breach of its duty to safely maintain the road. The Town moved for summary judgment and Supreme Court denied the motion. In affirming, the Court agreed plaintiffs presented triable questions of fact regarding the adequacy of the roadside barriers and signs near where the accident occurred. Notably, plaintiffs' expert opined the guide rail was not long enough to protect motorists (the Bronco went off the road before the point where the guide rails began), the earthen berm created by the Town to keep vehicles from going into the gorge was not an effective barrier and due to its slope actually acted as a ramp, vaulting the Bronco into the gorge rather than stopping it, and the driver's speed was not unexpected. There was also testimony from defendant Sheahan that the S-curve warning sign located just before the accident site was partially covered by branches and plaintiffs' expert opined the posted signs were not installed or maintained properly.