

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT COURT
AT KANSAS CITY**

USF HOLLAND, INC.,)	
)	
Plaintiff,)	
)	
)	Case No. 1316-CV01877
v.)	Division 26
)	
HUDDLESTON MACHINERY)	
MOVING LLC,)	
)	
and)	
)	
MICHAEL T. ROGERS,)	
)	
Defendants.)	

JUDGMENT

On the 13th day of May, 2014, this matter came before the Court for bench trial. Plaintiff appeared through counsel Daniel E. Kuhn. Defendants appeared through counsel David B. Mendelbaum. The parties presented evidence, and the matter was taken under advisement. The parties were given up to and including June 16, 2014, to submit to the Court proposed findings of fact and conclusions of law. Upon the Defendants’ Motion, the parties were granted an extension of time, and allowed up to and including June 23, 2014, to submit to the Court proposed findings of fact and conclusions of law.

After reviewing all of the evidence presented by both parties during the course of the trial, the Court finds as follows:

Findings of Fact

1. On October 3, 2011, at approximately 10:00 a.m. Mark Savner, an employee of Plaintiff USF Holland, Inc., was driving an 18-wheeled truck owned by USF Holland, Inc. Savner was operating the vehicle in the course and scope of his employment.

2. Savner was driving westbound on Front Street near the Interstate 435 overpass, in Kansas City, Jackson County, Missouri.
3. Front Street is a divided four-lane road, with two westbound lanes and two eastbound lanes. Savner was driving in the right westbound lane.
4. At the same time, Defendant Michael T. Rogers, an employee of Defendant Huddleston Machinery Moving LLC (hereinafter 'Huddleston'), was driving an 18-wheeled truck owned by Huddleston. Defendant Rogers was operating the vehicle in the course and scope of his employment.
5. Defendant Rogers was driving in the left westbound lane of Front Street.
6. Defendant Rogers was carrying an oversized load that took up the left westbound lane and part of the right westbound lane. Defendant Rogers' truck was marked as oversized with flags at the corners, and placards on the sides.
7. Near Front Street and the I-435 overpass in Jackson County, Missouri, Defendant Rogers approached Savner's truck from behind. As Defendant Rogers' drove next to Savner, Defendant Rogers' truck collided with the side mirror located on Savner's driver's side door.
8. Savner's driver's side mirror was bent forward, pulling the anchors and bolts from the upper edge of the door toward the front of the truck. Defendants' truck did not sustain any damage.
9. Plaintiff now files a claim against Defendants for negligence alleging Defendant Rogers failed to act with reasonable care in operating his motor vehicle under the circumstance, to wit: (a) following too close, and/or; (b) failure to yield, and/or; (c) improper lane usage, and/or; (d) failure to keep a proper lookout, and/or; (e) failure to reduce speed to avoid accident, and/or; (f) improper passing, and/or; (g) general negligence.

10. Plaintiff seeks damages in the amount of \$2,628.31, court costs, and any other relief the Court deems just and proper.

Conclusions of Law

As a matter of law, the Court must find that jurisdiction and venue in this case are proper. *Revised Missouri Statute* §508.010. The collision occurred in Jackson County, Missouri, therefore jurisdiction and venue are proper.

Plaintiff alleges Defendants were negligent. A prima facie negligence case must meet the following four elements:

(1) a legal duty on the part of the Defendant to use ordinary care to protect the Plaintiff against unreasonable risk of harm; (2) a breach of that duty; (3) a proximate cause between the breach and the resulting injury; and (4) actual damages to the Plaintiff's person or property.

Hays v. Royer, 384 S.W.3d 330, 333 (Mo. Ct. App. 2012).

Motorists have a duty to exercise the highest degree of care when operating a motor vehicle. RSMo § 304.012. Therefore it is undisputed that Defendant Rogers did have a legal duty to exercise the highest degree of care as he was operating Defendants' truck.

The photographic evidence and testimony regarding the position of Savner's driver's side mirror after the collision supports the Court's finding that Defendant Rogers approached Savner's truck from behind, and struck Savner's mirror. Therefore the Court finds that Defendant Rogers failed to act with reasonable care in operating his motor vehicle under the circumstance and breached his duty of care. The Court finds Defendant Rogers' breach was the proximate cause of the collision.

Finally, Plaintiff must prove actual damages to the property. *Hays*, 384 S.W.3d at 333. Damages are an essential element of a negligence claim. *Fly v. Royal Auto Repair*, 747 S.W.2d 237, 239 (Mo. Ct. App. 1988). In cases where there is damage to personal property, one rule of

calculation is the difference between the reasonable market value before and after the incident. *Gateway Foam Insulators, Inc. v. Jokerst Paving & Contr., Inc.*, 379 S.W.3d 179, 189 (Mo. 2009). “However, if it can be repaired to its prior state, the cost of repair is a measure of damages.” *Shapiro v. Kravitz*, 754 S.W.2d 44, 45 (Mo. Ct. App. 1988).

While Plaintiff presented photographs and testimony as to the damage to the truck, Plaintiff failed to present any evidence concerning the actual cost of the repairs or the reasonable market value of the truck before and after the incident.¹ Plaintiff has failed to prove actual damages; therefore Plaintiff has failed to meet their burden of proof in this matter. Judgment for Defendants.

Judgment

WHEREFORE, IT IS ORDERED, AJUDGED AND DECREED that the Court finds in favor of Defendant Huddleston Machinery Moving, LLC and Michael T. Rogers, and against the Plaintiff USF Holland, Inc.

IT IS SO ORDERED.

July 21, 2014

Date


HONORABLE JALILAH OTTO

¹ Defendants raised a hearsay objection to Plaintiff’s attempt to introduce evidence of damages via a business records affidavit. Defendant’s objection was sustained. See *CACH, LLC v. Askew*, 358 S.W.3d 58, 63 (Mo. 2012) and *Zundel v. Bommarito*, 778 S.W.2d 954, 958 (Mo. Ct. App. 1989).

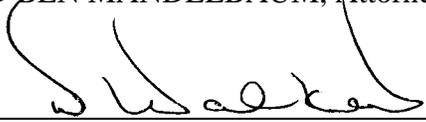
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was hand delivered/faxed/mailed and/or sent through the eFiling system to the following on the 21st day of July, 2014.

BRADLEY DAVID PIERCE, Attorney for Plaintiff

IRWIN JAMES FRANKEL, Attorney for Plaintiff

DAVID BEN MANDELBAUM, Attorney for Defendant



Judicial Administrative Assistant/Law Clerk, Division 26