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Targeted Research, Drawn Entirely from the Decision-Summaries Posted on the New York Appellate Digest Website, On the Question Whether Defendant's Act or Omission Merely Furnished a Condition for an Accident (and Therefore Did Not Render the Defendant Liable) or Whether Defendant's Act or Omission Was a Proximate Cause of the Accident (Rendering the Defendant Liable). The Line Between Furnishing a Condition for an Accident and Causing an Accident Is Often Difficult to Draw. The Cases Collected Here Shed Some Light on the Analyses Used by the Courts. The Distinction Is Important, Substantial Plaintiff's Verdicts Have Been Reversed Because What Was Deemed a Cause at the Trial Level Was Deemed a Condition on Appeal.

Did the Defendant Merely Furnish the Condition for the Accident, or Did the Defendant Cause the Accident?
The Defendant's Liability Depends on the Answer.
Targeted Research Done Entirely on the New York Appellate Digest Website on November 11, 2020.

Contents

Table of Contents

Table of Contents

Targeted Research, Drawn Entirely from the Decision-Summaries Posted on the New York Appellate Digest Website, On the Question Whether Defendant's Act or Omission Merely Furnished a Condition for an Accident (and Therefore Did Not Render the Defendant Liable) or Whether Defendant's Act or Omission Was a Proximate Cause of the Accident (Rendering the Defendant Liable). The Line Between Furnishing a Condition for an Accident and Causing an Accident Is Often Difficult to Draw. The Cases Collected Here Shed Some Light on the Analyses Used by the Courts. The Distinction Is Important, Substantial Plaintiff's Verdicts Have Been Reversed Because What Was Deemed a Cause at the Trial Level Was Deemed a Condition on Appeal.

BICYCLISTS, BIKE PATH, RETAINING WALL DESIGN.

CONDITION WHICH RESULTED IN PLAINTIFF'S INJURY WAS NOT THE CAUSE OF THE INJURY; PLAINTIFF BICYCLIST WAS INJURED AFTER LOSING CONTROL OF THE BICYCLE, GOING OFF THE BIKE PATH AND DROPPING FIVE-FEET FROM THE TOP OF A RETAINING WALL.

Here the dangerous condition, i.e., the retaining wall with a five-foot drop, was not that close to the bike path. The plaintiff bicyclist would not have gone over the wall if he had not failed to maintain his brakes. The proximity or design of the retaining wall, therefore, was not a proximate cause of the accident.

The Second Department determined a personal injury action was properly dismissed because the condition which led to plaintiff's injury (a five-foot drop from the top of a retaining wall to the sidewalk) was not the cause of the accident. Infant plaintiff lost control of her bicycle, left the path, and was injured when she went over the top of the retaining wall and fell to the sidewalk:

Although the issue of proximate cause is generally one for the finder of fact …, "liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes" … .

Here, the evidence submitted in support of the defendant's motion, which included a transcript of the deposition testimony of the infant plaintiff, demonstrated that the accident was proximately caused by the infant plaintiff's failure to control her bicycle and the failure of the bicycle's brakes … . The retaining wall, which was erected a considerable distance from the portion of the paved pedestrian path from which the infant plaintiff deviated, merely furnished the condition or occasion for the infant plaintiff's accident, and was not one of its causes … . Any alleged negligence in the design, maintenance, or management of the retaining wall did not proximately cause the subject accident … . Rattray v City of New York, 2014 NY Slip Op 08416, 2nd Dept 12-3-14

PLAINTIFF'S OWN NEGLIGENCE.

PLAINTIFF APPARENTLY SLIPPED AND FELL BECAUSE OF LEAVES ON THE STAIRWAY; PLAINTIFF'S NEGLIGENCE IN DESCENDING THE STAIRWAY FURNISHED THE OCCASION FOR THE ACCIDENT, BUT WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT (SECOND DEPT).

The plaintiff's decision to descend the leaf-covered stairs, i.e., the plaintiff's own negligence, was deemed to have furnished the condition for plaintiff's slip and fall but was not a proximate cause of her fall.

The Second Department determined the verdict in this slip and fall case was not contrary to the weight of the evidence. Plaintiff descended a stairway which had leaves on it:

A jury's finding that a party was at fault but that such fault was not a proximate cause of the accident is inconsistent and against the weight of the evidence only when the issues are so inextricably interwoven as to make it logically impossible to find negligence without also finding proximate cause" … . Here, the jury could have reasonably concluded that the plaintiff was negligent in choosing to descend the stairway despite the presence of leaves, but that her negligence merely furnished the occasion for the accident … . Accordingly, the jury's determination that the plaintiff's conduct was not a substantial factor in causing the accident was not contrary to the weight of the evidence. Brennan v Gormley, 2020 NY Slip Op 01473, Second Dept 3-4-20

SUBWAY ACCIDENTS.

DEFENDANT TRANSIT AUTHORITY'S FAILURE TO MAKE SURE PLAINTIFF'S DECEDENT, WHO WAS INTOXICATED, GOT OFF THE SUBWAY AT THE END OF THE LINE FURNISHED THE CONDITION FOR DECEDENT'S SUBSEQUENT DEATH WHEN HE FELL FROM THE TRAIN, BUT WAS NOT THE CAUSE; DEFENDANT'S MOTION TO SET ASIDE THE SUBSTANTIAL VERDICT SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the substantial plaintiff's verdict in this wrongful death case should have been set aside. It was alleged that the NYS Transit Authority was negligent in failing to make sure all passengers were off the subway train when the train reached the end of the line, requiring that it be

repositioned in the relay tunnel. Plaintiff's decedent, who was intoxicated, remained on the train. At some point he fell from the train in the relay tunnel and was killed:

… [V]iewing the evidence in the light most favorable to the plaintiffs, there is no valid line of reasoning and permissible inferences which could possibly lead rational people to conclude that the defendants' alleged negligence was a proximate cause of the decedent's injuries and death … . Even assuming that the defendants' employees were negligent in failing to remove the decedent from the train before it was taken into the subject relay tunnel, the defendants' negligence merely furnished the condition or occasion for the occurrence of the decedent's fall from the train … rather than being one of its proximate causes. While the record evidence supports the plaintiffs' theory that the decedent was in the area between the two northernmost subway cars when he fell to the tracks below, the circumstances that led the decedent to be in that area, and the cause of the fall itself, remain unknown and, therefore, speculative … . Williams v New York City Tr. Auth., 2019 NY Slip Op 06187, Second Dept 8-21-19

TRAFFIC ACCIDENTS, ANIMALS, PEDESTRIANS.

REVERSED BY COURT OF APPEALS (IMMEDIATELY BELOW); ESCAPED CALF FURNISHED THE CONDITION OR OCCASION FOR PLAINTIFF'S DECEDENT'S PRESENCE IN THE ROAD WHEN SHE WAS STRUCK, BUT WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF'S DECEDENT'S BEING IN THE ROAD.

This case and its reversal by the Court of Appeals (see the next summary below) illustrate that the distinction between furnishing a condition for an accident and causing the accident is not an easy one to make.

The Fourth Department held the escape of the animal (a calf) furnished the condition for, but was not the proximate cause of, the plaintiff's death when she was struck by a car trying to usher the calf out of the road.

But the Court of Appeals reversed, finding that whether the escape of the calf was a proximate cause of the plaintiff's death was a question of fact for the jury.

The Fourth Department, over a dissent, determined that defendant's motion for summary judgment should have been granted. A calf escaped from defendant farm. Plaintiff's decedent stopped her car and got out to aid the calf. Both plaintiff's decedent and the calf were struck by a car when they were in the road, although there was no evidence decedent stopped her car because the calf blocked the road. The Fourth Department held that the escape of the calf did not "cause" the decedent to be in the road. Rather the escape of the calf furnished the condition or occasion for decedent to be in the road:

Although “a landowner or the owner of an animal may be liable under ordinary tort-law principles when a farm animal . . . is negligently allowed to stray from the property on which the animal is kept” …, “liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes” … . Here, in support of its motion, Drumm Farm established that any negligence on its part in allowing the calf to escape merely “created the opportunity for plaintiff to be standing [in the roadway], [but] it did not cause [her] to stand” there … . “In short, the [alleged] negligence of [Drumm Farm] merely furnished the occasion for an unrelated act to cause injuries not ordinarily anticipated” … . Importantly, plaintiff does not contend, and did not submit any evidence that would establish, that the calf’s presence in the road blocked decedent’s ability to travel in the southbound lane or otherwise forced decedent to stop her vehicle. Thus, Drumm Farm established as a matter of law that its “alleged negligent act, at most, caused the [calf to wander] out of the field, which was not the immediate cause of the accident” … , and plaintiff failed to raise a triable issue of fact in opposition … . Hain v Jamison, 2015 NY Slip Op 06074, 4th Dept 7-10-15

TRAFFIC ACCIDENTS, ANIMALS, PEDESTRIANS.

REVERSING THE FOURTH DEPARTMENT (IMMEDIATELY ABOVE); QUESTION OF FACT WHETHER ALLOWING A CALF TO ESCAPE FROM A FARM WAS A PROXIMATE CAUSE OF THE DEATH OF A MOTORIST WHO STOPPED TO HELP THE CALF AND WAS STRUCK.

The Court of Appeals, in a full-fledged opinion by Judge Stein, reversing the appellate division, determined the proximate cause of the accident presented a jury question. Defendants own a farm from which a calf, born that day, escaped. Plaintiff’s decedent saw the calf in the roadway, stopped her car and got out to help the calf. She was then struck by a vehicle and killed. The appellate division held that the escaped calf created a condition for the accident, but was not a proximate cause of the accident. The Court of Appeals reviewed the case law addressing when an intervening act severs the causal connection and held that, under these facts, proximate cause presented a jury question:

The very same risk that rendered negligent the Farm’s alleged failure to restrain or retrieve its farm animal — namely, that the wandering calf would enter a roadway and cause a collision — was, in fact, the risk that came to fruition … . That the Farm could not predict the exact manner in which the calf would cause injury to a motorist does not preclude liability because the general risk and character of injuries was foreseeable … . … Thus, we cannot say, as a matter of law, that the Farm’s negligence merely furnished the occasion for the collision or that the accident resulting in decedent’s death did not flow from the Farm’s negligent conduct in permitting its calf to stray.

A factfinder could reasonably conclude that decedent's actions in exiting her vehicle and entering the roadway were an entirely "'normal or foreseeable consequence of the situation created by the defendant's negligence'" … . In Hastings v Sauve, we held that a property owner may be liable under ordinary principles of tort law when he or she, through negligent acts or omissions, allows a farm animal — specifically, a domestic animal as defined in Agriculture and Markets Law § 108 (7) — to stray from the property on which the animal is kept (see 21 NY3d at 125-126). … Thus, a jury could reasonably conclude that it is foreseeable that a motorist who encounters such an animal on a rural roadway would attempt to remove the animal from the thoroughfare. Such conduct cannot, as a matter of law, be considered so "extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct," that it breaks the chain of causation … . Hain v Jamison, 2016 NY Slip Op 08583, CtApp 12-22-16

TRAFFIC ACCIDENTS, BICYCLISTS.

DEFENDANT PARKED PARALLEL TO ANOTHER CAR, WAITING FOR THE CAR TO PULL OUT OF A PARKING SPACE; PLAINTIFF BICYCLIST WAS INJURED WHEN HE TRIED TO RIDE BETWEEN THE TWO CARS; DEFENDANT'S' STOPPED CAR MERELY FURNISHED THE CONDITION FOR PLAINTIFF'S BICYCLE ACCIDENT, NOT A PROXIMATE CAUSE.

The Second Department, reversing Supreme Court, determined summary judgment should have been granted to defendant Brady in this bicycle-car collision case. Brady was parked parallel to Dunbar waiting for Dunbar to pull out of a parking space. Plaintiff rode her bicycle between the two cars and struck the door of the Dunbar car when Dunbar opened it to speak to Brady. Brady's car was deemed not to be a proximate cause of the accident, rather the position of Brady's car merely furnished the condition for the accident. Dunbar's motion for summary judgment, however was properly denied:

The Supreme Court should have granted Brady's motion for summary judgment dismissing the second supplemental complaint insofar as asserted against him. Although the issue of proximate cause is generally one for the jury … , "liability may not be imposed upon a party who merely furnished the condition or occasion for the occurrence of the event' but was not one of its causes" … . Here, in support of his motion, Brady demonstrated his prima facie entitlement to judgment as a matter of law by presenting evidence that his conduct in stopping his car while waiting for a parking space merely furnished the condition or occasion for the accident, and was not a proximate cause of the plaintiff's injuries … .

… Dunbar failed to eliminate all triable issues of fact as to whether Dunbar was negligent in opening the door when it was not reasonably safe to do so, and in allegedly

failing to see what, by the reasonable use of his senses, he should have seen … . Price v Tasber, 2016 NY Slip Op 08385, 2nd Dept 12-14-16

TRAFFIC ACCIDENTS, BICYCLISTS.

PLAINTIFF WAS RIDING HER BICYCLE ON A SIDEWALK WHEN SHE COLLIDED WITH DEFENDANT'S VEHICLE AS DEFENDANT WAS ATTEMPTING TO PULL OUT OF A PARKING LOT; DEFENDANT DID NOT SHOW THE PRESENCE OF HIS VEHICLE ON THE SIDEWALK MERELY FURNISHED THE CONDTION FOR THE ACCIDENT; DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant's motion for summary judgment in this bicycle-vehicle collision case should not have been granted. Apparently plaintiff was riding on the sidewalk and collided with defendant's vehicle as it was attempting to pull out of a parking lot:

The plaintiff Jamie Heaney (hereinafter the plaintiff) alleges she was operating a bicycle on a sidewalk when she collided with the defendant's vehicle, which was attempting to exit from a parking lot … .

"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" … . "There can be more than one proximate cause of an accident" … , and the issue of proximate cause is generally one for the jury … . Here, the defendant's vehicle had pulled out from a parking lot and came to a stop immediately prior to the impact. The defendant failed to establish, prima facie, that the presence of his vehicle on the sidewalk merely furnished the condition or occasion for the occurrence of the event but was not one of its causes … . Heaney v Kahn, 2020 NY Slip Op 01333, Second Dept 2-26-20

TRAFFIC ACCIDENTS, DOUBLE-PARKED.

DEFENDANT SHOULD HAVE BEEN AWARDED SUMMARY JUDGMENT IN THIS REAR-END COLLISION CASE; THE FACT THAT DEFENDANT'S VEHICLE WAS DOUBLE-PARKED WAS NOT THE CAUSE OF THE ACCIDENT.

The fact that defendant was illegally double-parked was deemed a condition for but not the cause of the rear-end collision. Note that had traffic been heavy or the weather conditions bad the result may have been different.

Reversing Supreme Court, the First Department determined the fact that defendant's (Pepsi's) vehicle was double-parked did not warrant denial of defendant's summary judgment motion. The fact that the vehicle was double-parked was merely the condition or occasion for the occurrence of the accident, not the cause. Plaintiff's claim that sunlight temporarily blinded him did not constitute a nonnegligent explanation for his striking the rear of the Pepsi vehicle:

In this rear-end collision case, even assuming that the Pepsi vehicle, hit from behind, was illegally double-parked, that fact, standing alone "does not automatically establish that such double-parking was the proximate cause of the accident" … . Here, the record shows that the double-parked vehicle, given the road conditions at the time of the accident, namely, the favorable weather, the time of day, and the relatively minimal amount of traffic on the road at the time, "merely furnished the condition or occasion for the occurrence of the event but was not one of its causes" … . Plaintiff's proffered excuse for the accident, that sunlight temporary blinded the driver of the rear vehicle, does not constitute a nonnegligent explanation for the rear-end collision … . Barry v Pepsi-Cola Bottling Co. of N.Y., Inc., 2015 NY Slip Op 06034, 1st Dept 7-9-15

TRAFFIC ACCIDENTS, DOUBLE-PARKED.

PLAINTIFF'S DOUBLE-PARKED VEHICLE FURNISHED A CONDITION FOR THE ACCIDENT BUT WAS NOT A PROXIMATE CAUSE OF THE ACCIDENT.

For some reason, the plaintiff pulled in front of the double-parked car after successfully passing it and then backed up into it. The double-parked car was a condition, not a cause.

The First Department reversed Supreme Court finding the fact that plaintiff was double-parked furnished the condition for the event but was not one of the causes of the

accident. The defendant driver had pulled around in front of plaintiff's vehicle and then backed into it:

The fact that a vehicle is double parked "does not automatically establish that such double parking was the proximate cause of the accident" … . Here, plaintiff established her prima facie entitlement to summary judgment by demonstrating that the location of her vehicle merely furnished the condition or occasion for the occurrence of the event but was not one of its causes … .

The record demonstrates that plaintiff's vehicle was double parked on a one way street. Defendants' vehicle, moving in the same direction, successfully passed plaintiff's vehicle on the left and pulled approximately three to four car lengths in front of it before stopping. One to two seconds later, defendants' vehicle drove in reverse in an erratic manner and struck the front of plaintiff's car, which was stationary at all times. Cervera v Moran, 2014 NY Slip Op 07945, 1st Dept 11-18-14

TRAFFIC ACCIDENTS, PARKED TRUCK PARTIALLY IN ROADWAY.

PARKED GARBAGE TRUCK FURNISHED CONDITION FOR THE ACCIDENT, BUT WAS NOT PROXIMATE CAUSE OF THE ACCIDENT

The Second Department determined plaintiff's complaint was properly dismissed because the accident was caused by plaintiff's failure to see what he should have seen. Plaintiff's vehicle struck a garbage truck which was stopped partially in the roadway:

Although the issue of proximate cause is generally one for the jury …, liability may not be imposed upon a party who "merely furnished the condition or occasion for the occurrence of the event" but was not one of its causes … . Here, the defendants demonstrated their entitlement to judgment as a matter of law by presenting evidentiary proof that [defendant's] conduct in stopping his truck partially in the roadway merely furnished the condition for the accident, but was not a proximate cause thereof… . Lee v D Daniels Contr Ltd, 2014 NY Slip Op 00487, 2nd Dept 1-29-14

TRAFFIC ACCIDENTS, PEDESTRIANS.

INITIAL ACCIDENT FURNISHED A CONDITION FOR THE SUBSEQUENT ACCIDENT WHICH INJURED PLAINTIFF, BUT WAS NOT THE PROXIMATE CAUSE OF THE SUBSEQUENT ACCIDENT.

Here the plaintiff was a passenger in a car, driven by Sheehan, which struck a barrier and remained in the roadway. Plaintiff got out of the Sheehan car and went to a safe area. The Sheehan car was struck by another car. Plaintiff then walked back to the accident scene where he was struck by a third car. The initial accident (the Sheehan car striking the barrier) furnished a condition for the third accident which injured plaintiff when he went back to the scene, but was not the proximate cause of the third accident. Note the dissent, however. These are difficult distinctions.

The Fourth Department, over a dissent, determined the initial accident was not the proximate cause of the third accident in which plaintiff was injured. In the initial accident a car driven by Sheehan struck a barrier. The Sheehan car was left in the roadway. Plaintiff, who was not injured, got out of the Sheehan car and went to a safe area. The Sheehan car was then struck by another car driven by a non-party. Plaintiff went back to the accident scene where he was injured when there was yet another collision involving a third car driven by Gilray. The majority held that the initial accident created a condition for the accident which injured plaintiff, but was not the proximate cause of that accident:

Sheehan's negligence, if any, " did nothing more than to furnish the condition or give rise to the occasion by which [plaintiff's] injury was made possible and which was brought about by the intervention of a new, independent and efficient cause' " … . Prior to the Gilray accident, the situation resulting from the first accident "was a static, completed occurrence" with plaintiff and all of the passengers of Sheehan's vehicle safely off the roadway … . The Gilray accident arose from a "new and independent cause and not as [the] consequence of [Sheehan's] original act[]" … . "The risk undertaken by plaintiff" in returning to the roadway was created by himself … .

FROM THE DISSENT:

Under the circumstances of this case, a factfinder could reasonably conclude that a foreseeable consequence of Sheehan's negligence in losing control, striking the barrier, and leaving the disabled vehicle obstructing the left lane of a divided roadway without activating the flashing hazard lights at night is that motorists, unable to see the vehicle at they approached, would strike it… . In determining that the situation resulting from Sheehan's accident was a static, completed occurrence prior to Gilray's collision, the majority fails to account for the critical facts that the disabled vehicle was not moved safely off the roadway and instead remained in a position of peril obstructing the left

lane without its flashing hazard lights activated, and that plaintiff was injured while positioned near the disabled vehicle … . Plaintiff's positioning of himself in the area of the disabled vehicle where he was susceptible to further harm is also foreseeable. The fact that plaintiff, as a passenger involved in a vehicular accident, would leave a place of safety to return to the vehicle to speak with a responding officer—particularly where, as here, plaintiff was best positioned to provide the officer with information given the condition and preoccupation of Sheehan and the other passengers—is "an entirely normal or foreseeable consequence of the situation created by [Sheehan's] negligence"… . Serrano v Gilray, 2017 NY Slip Op 05523, 4th Dept 7-7-17

TRAFFIC ACCIDENTS, PEDESTRIANS.

REAR-MOST DRIVER IN A CHAIN-REACTION ACCIDENT LIABLE TO PLAINTIFF WHO WAS IN THE LINE OF STOPPED CARS, REAR-MOST DRIVER NOT LIABLE FOR PLAINTIFF'S SUBSEQUENT INJURY WHEN HE WAS STRUCK BY ANOTHER DRIVER AFTER GETTING OUT OF HIS CAR (FOURTH DEPT).

The question here is whether the rear-end collision was a proximate cause of plaintiff being stuck by another car when he got out to check on other drivers involved in the chain-reaction accident. The court held the initial rear-end collision was a condition, not a proximate cause.

The Fourth Department determined plaintiff was entitled to summary judgment in his action against the rear-most driver (Lipome) which struck a stopped car (Foley's car) causing chain-reaction collisions. Plaintiff was subsequently struck by another car (driven by Hourt) after he got out of his car to check on the other drivers. The rear-most driver who caused the chain-reaction accident (Lipome) was not liable for the subsequent accident (when plaintiff was on foot and struck by Hourt):

We agree with Lipome … that she is entitled to partial summary judgment dismissing the complaint against her insofar as it relates to the accident between plaintiff and Hourt, and we therefore further modify the order accordingly. Lipome's negligence in the chain-reaction accident "did nothing more than to furnish the condition or give rise to the occasion by which [plaintiff's] injury was made possible and which was brought about by the intervention of a new, independent and efficient cause" … , i.e., plaintiff's conduct in walking back to the accident scene. Prior to plaintiff's accident with Hourt, the situation resulting from the initial rear-end accident " was a static, completed occurrence,' . . . [and] [t]he risk undertaken by plaintiff' [in walking back to the rear-end accident scene] was created by himself" … . Gustke v Nickerson, 2018 NY Slip Op 02087, Fourth Dept 3-23-18

TRAFFIC ACCIDENTS, MOTORCYCLES.

ALTHOUGH DEFENDANT'S TRUCK WAS IN THE WRONG LANE, THE POSITION OF THE TRUCK FURNISHED A CONDITION FOR THE ACCIDENT BUT WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT, PLAINTIFF'S DECEDENT WAS WEAVING IN AND OUT OF TRAFFIC ON HIS MOTORCYCLE AT HIGH SPEED WHEN HE STRUCK A CAR, AND WAS THROWN UNDER THE TRUCK (FIRST DEPT).

The First Department determined defendant trucking company's motion for summary judgment in this traffic accident case was properly granted. Plaintiff's decedent was weaving in and out of traffic at high speed on his motorcycle when he struck the rear of a car, was thrown under and tractor trailer, and run over by the rear wheels. The truck was in a lane where truck traffic was prohibited. The court held the position of the truck furnished the condition for the accident but was not the proximate cause of the accident:

Defendants made a prima facie showing that decedent's negligent operation of the motorcycle caused the accident… . Further, although defendants acknowledge that the tractor-trailer was unlawfully in the left lane at the time of the accident … , there is no evidence in the record that would support a finding that the statutory violation was a proximate cause of the accident. The presence of the tractor-trailer in the left lane merely furnished the condition that led to decedent's death, and was not a proximate cause of the accident … . Nor is there any nonspeculative basis for finding that defendant driver could have avoided the accident.

Plaintiffs failed to present evidence raising a triable issue of fact as to whether any negligence on the part of defendants was a substantial factor in causing the accident. Although plaintiffs did not have an opportunity to depose defendant driver, they failed to demonstrate the existence of any testimony by defendant driver relevant to defendant's summary judgment motion. Caro v Chesnick, 2017 NY Slip Op 07940, First Dept 11-14-17

TRAFFIC ACCIDENTS, ROAD DESIGN.

EVEN THOUGH THE LENGTH OF MERGING LANE WAS A FACTOR IN THE ACCIDENT, IT WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT.

Plaintiff's car was side-swiped by defendant's van when the van was in a merging lane called a taper. The taper was 100 feet shorter than required. In affirming summary judgment to the defendants responsible for constructing the taper, the First Department determined the van was the sole proximate cause of the accident:

The Supreme Court properly found that the alleged negligence of the DOE van's driver was a proximate cause of the accident. Here, as the van was stopped next to plaintiff's vehicle, the length of the taper, created by defendants Tully and Verizon, was entirely unrelated to the occurrence of the accident. As noted, the accident was caused by the alleged improper operation of the DOE vehicle. There is no evidence that the van was unable to safely merge, instead of merely trying to get to the front of the line of traffic moving through the construction zone. A jury would thus be required to speculate that the taper was a proximate cause of the accident. As a result, even assuming the taper in this case did not comply with …standards, and that it may have furnished the condition or occasion for the occurrence, it was not a proximate cause of it … . **Collins v City of New York, 2013 NY Slip Op 02816, 1st Dept, 4-25-13**

TRAFFIC ACCIDENTS, ROADWORK, PEDESTRIANS.

SIGNALING THE DRIVER TO STOP FURNISHED THE CONDITION FOR THE ACCIDENT BUT WAS NOT THE PROXIMATE CAUSE OF THE ACCIDENT, THE DRIVER'S DECISION TO BACK UP WAS THE PROXIMATE CAUSE OF HER STRIKING PLAINTIFF'S DECEDENT (SECOND DEPT).

The Second Department determined defendant corporation's (FHGC's) motion for summary judgment in this traffic accident case was properly granted. FHGC was re-sodding an area near the curb. FHGC's employee signaled to defendant driver to stop. Defendant driver (Miketta) then backed down the road and struck plaintiff's decedent, who was walking. Plaintiff sued Miketta and FHGC. The court held that the order to stop merely furnished a condition for the accident to occur, but was not a proximate cause of the accident:

… "[L]iability may not be imposed upon a party who merely furnished the condition or occasion for the occurrence of the event' but was not one of its causes" … .

… FHGC demonstrated its prima facie entitlement to judgment as a matter of law by presenting evidence that its employees' conduct in performing work near the roadway merely furnished the condition or occasion for the accident, and was not a proximate cause of the decedent's injuries. Miketta's decision to reverse her vehicle and drive back down the one-way street, ultimately striking the decedent, was the sole proximate cause of the accident … . Goldstein v Kingston, 2017 NY Slip Op 06429, Second Dept 9-13-17

TRAFFIC ACCIDENTS, ROADWORK, PEDESTRIANS.

TEMPORARY ROAD WORK TRAFFIC CONTROL MAY HAVE FURNISHED THE CONDITION FOR THE ACCIDENT BUT WAS NOT THE PROXIMATE CAUSE OF THE DRIVER STRIKING THE PEDESTRIAN PLAINTIFF, SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED TO THE ROAD WORK DEFENDANTS (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined the traffic control measures taken by the defendants doing work on or near a road furnished the condition for the accident but was not the proximate cause of the accident. Defendant driver swerved to avoid a rear-end collision with a car that made a sudden left turn. The driver struck plaintiff, who was standing in the parking lane getting ready to cross the street:

Even assuming, arguendo, that the accident occurred within a "work zone" ,,, and defendants-appellants were negligent in the design and placement of temporary traffic control … , … we conclude that such negligence was not a proximate cause of the accident … . "A showing of negligence is not enough; there must also be proof that the negligence was a proximate cause of the event that produced the harm" … . We reject plaintiffs' contention that the temporary traffic control at the site was a proximate cause of the accident. Any negligence with respect to the construction work merely furnished the condition or occasion for plaintiff being struck by a vehicle while crossing the street and was not a proximate cause of the accident … . Gregory v Cavarello, 2017 NY Slip Op 07791, Fourth Dept 11-9-17

TRAFFIC ACCIDENTS. SLOW MOVING TRUCK.

DEFENDANT'S SLOW MOVING TRUCK FURNISHED THE CONDITION FOR THE REAR-END COLLISION BUT WAS NOT THE CAUSE OF THE COLLISION, DIFFICULTY SEEING BECAUSE OF SUNLIGHT DID NOT CONSTITUTE A NON-NEGLIGENT EXCUSE (FIRST DEPT).

The First Department, reversing Supreme Court, determined that defendant's motion for summary judgment should have been granted in this traffic-accident case:

In this rear-end collision case, the fact that the truck owned and operated by defendants had entered onto the parkway one exit earlier than authorized by a permit issued by the Department of Transportation, standing alone, does not establish that the early entry onto the parkway was a proximate cause of the accident … . The record reflects that the accident occurred on a dry and sunny day with light traffic, that defendant Paolino was driving the truck slowly, and that Paolino had turned on the truck's hazard lights. The truck's presence on the parkway merely furnished the condition or occasion for the occurrence of the accident, but not its cause … . Battocchio v Paolino, 2019 NY Slip Op 02477, First Dept 4-2-19

TRAFFIC ACCIDENTS, STOPPED VEHICLE.

VEHICLE WHICH STOPPED BEHIND A DISABLED VEHICLE FURNISHED THE CONDITION FOR THE SUBSEQUENT REAR-END COLLISION BUT WAS NOT THE PROXIMATE CAUSE OF THE COLLISION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the Perez defendants' motion for summary judgment in this rear-end collision case should have been granted. Perez stopped his vehicle in the left lane behind a disabled vehicle when the driver of the disabled vehicle flagged him down. Plaintiff came to a stop behind the Perez vehicle and was attempting to go around the Perez vehicle when plaintiff's vehicle was struck from behind by the Chen vehicle. The Second Department held that the Perez vehicle furnished the condition for the traffic accident but did not cause the accident. The accident was caused by Chen's failure to maintain a safe distance:

This evidence demonstrated that Perez's conduct of stopping his vehicle in the left lane of travel with its hazard lights engaged was not a proximate cause of the collision between Chen's SUV and the plaintiff's vehicle, but rather merely furnished the condition or occasion for it … . Since the plaintiff was able to safely bring his vehicle to a complete stop behind Perez's vehicle, where it remained stopped for approximately two

minutes prior to the accident, any purported negligence on Perez's part was not a proximate cause of the collision between Chen's SUV and the plaintiff's vehicle or of the plaintiff's injuries … . The sole proximate cause of the accident was Chen's failure to maintain a safe driving speed and distance behind the plaintiff's vehicle … . Kante v Tong Fei Chen, 2019 NY Slip Op 07390, Second Dept 10-16-19

TRAFFIC ACCIDENTS, STOPPED VEHICLE.

TOW TRUCK DEFENDANTS FURNISHED THE CONDITION FOR THE REAR-END COLLISION BUT TOW TRUCK WAS NOT THE PROXIMATE CAUSE, TOW TRUCK DEFENDANTS MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED (FIRST DEPT).

The First Department, reversing Supreme Court, determined that defendant's tow truck merely furnished the condition for the rear-end collision and was not the proximate cause. The tow truck driver was in the process of hooking up a car (a Jetta) to tow it off the expressway when the Jetta was struck from behind by an intoxicated driver (Ripoli) who had fallen asleep. Plaintiff was a passenger in the Jetta:

Defendants-appellants are entitled to summary judgment, because the tow truck driver's affirmative negligence, if any, did nothing more than furnish the condition or give rise to the occasion by which plaintiff's injury was made possible… .. There is no allegation that their actions violated a traffic regulation and the record shows that the tow truck driver was in the process of securing the vehicle to tow it off the expressway when the accident happened.

Plaintiff's assertion that the accident would not have occurred if the tow truck driver had placed additional flares or moved the ones that the police officers had placed, displayed cones or removed the Jetta from the location sooner is speculative and insufficient to raise an issue of fact, because it is undisputed that Ripoli fell asleep before his vehicle rear- ended the Jetta … . McLean v Ripoli, 2018 NY Slip Op 00461, First Dept 1-25-18

TREE TRIMMING, OPERATING THE BUSINESS WITHOUT A LICENSE, NEGLIGENT ENTRUSTMENT OF A TRUCK.

ALLEGEDLY OPERATING A TREE-TRIMMING BUSINESS WITHOUT A LICENSE AND ENTRUSTING THE TREE-TRIMMING TRUCK TO PLAINTIFF'S CO-WORKER, IF NEGLIGENT, WERE NOT PROXIMATE CAUSES OF PLAINTIFF'S INJURY FROM A DANGEROUS CONDITION ON THE TRUCK (SECOND DEPT).

The Second Department determined the allegations that defendants were operating a tree-trimming business without a license and negligently entrusted the tree-trimming to one Perez (with whom plaintiff worked) were not proximate causes of the injury. Plaintiff caught a ring on his finger on a spike on a metal step on the truck and his finger was severed. The court noted that the danger was open and obvious and the accident was an 'extraordinary occurrence' so there was no duty to warn:

"Evidence of negligence is not enough by itself to establish liability. It must also be proved that the negligence was [a proximate] cause of the event which produced the harm"… . Thus, " liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes'" … . Further, "proximate cause is no less essential an element of liability because the negligence charged is premised in part or in whole on a claim that a statute or ordinance . . . has been violated" … .

… [E]ven if the defendants were negligent in operating a tree-trimming business without a license or in lending or renting or entrusting the truck to Perez, such negligent acts only furnished the occasion for the plaintiff's accident … , but were not a proximate cause of the accident. Deschamps v Timberwolf Tree & Tile Serv., 2019 NY Slip Op 04133, Second Dept 5-29-19

WOOD STORED ON A SHELF FELL WHEN PLAINTIFF MOVED IT.

WOOD STORED ON A SHELF WHICH FELL ON PLAINTIFF WHEN PLAINTIFF INADVERTENTLY MOVED IT WAS THE CONDITION FOR THE OCCURRENCE OF THE EVENT, BUT NOT THE CAUSE.

In reversing Supreme Court, the Second Department determined the defendant school was entitled to summary judgment in a personal injury action brought by a student. The student had been injured when he inadvertently caused wood stored on a shelf to fall on him. The Second Department determined the wood on the shelf was the condition for occurrence of the event but not the cause:

“In order for a landowner to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon property, it must be established that a defective condition existed and that the landowner affirmatively created the condition or had actual or constructive notice of its existence” … . “It is true that whether a certain condition qualifies as dangerous or defective is usually a question of fact for the jury to decide” … . “However, summary judgment in favor of a defendant is appropriate where a plaintiff fails to submit any evidence that a particular condition is actually defective or dangerous” … .

Here, the defendants established prima facie that there was no evidence of a dangerous or defective condition that caused the injured plaintiff's accident. The injured plaintiff testified at the General Municipal Law § 50-h hearing that he, in effect, inadvertently pushed the two two-by-four pieces of wood off the shelving unit with the stick. Under these circumstances, the presence of the two-by-fours resting atop the shelving unit “merely furnished the condition or occasion for the occurrence of the event,” but was not one of its causes… . Rant v Locust Val High School, 2014 NY Slip Op 08415, 2nd Dept 12-3-14