

GERALD ANTHONY GARCIA
Plaintiff

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IN THE DISTRICT COURT

V.

438th JUDICIAL DISTRICT

VIA METROPOLITAN TRANSIT
Defendant

OF BEXAR COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gerald Anthony Garcia, hereinafter called Plaintiff, complaining of and about VIA Metropolitan Transit, hereinafter called Defendant, and for cause of action shows unto the Court the following:

I

JURISDICTIONAL STATEMENT

1. Plaintiff, Gerald Anthony Garcia, is an Individual whose address is Texas, Bexar County, San Antonio, 1234 Main St, 78209.
2. Defendant, VIA Metropolitan Transit, a legal Texas business entity, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to the Texas Business Organizations Code, by serving the registered agent of the entity at 1234 Second Street, San Antonio, TX 78209.
3. The subject matter in controversy is within the jurisdictional limits of this court.

II

FACTS

4. Plaintiff is a motorcycle traffic officer with the San Antonio Police Department. On October 5, 2004, Plaintiff was directing traffic at the intersection of Basse Road and Blanco

Road. Plaintiff observed a van operated by Defendant stopped in a southbound lane of Blanco Road. Plaintiff then motioned for the van to proceed southbound through the intersection. As the van traversed the intersection, it struck Plaintiff with its mirror while traveling approximately 5-10 miles per hour and injured his shoulder.

III

CAUSE OF ACTION

5. Defendant owed a duty to Plaintiff to exercise reasonable care to maintain a proper lookout, to apply the brakes in a timely manner, and to maneuver the van to avoid hitting Plaintiff as Defendant passed through the intersection.

6. Defendant breached the duty owed to plaintiff, to maintain a proper lookout, to apply the brakes in a timely manner, and to maneuver the van to avoid hitting Plaintiff by negligently striking Plaintiff as Defendant passed through the intersection.

7. As the direct and proximate result of Defendant's conduct in failing to maintain a proper lookout, to apply the brakes in a timely manner, and to maneuver the van to avoid hitting Plaintiff, all in breach of the duty owed by Defendant to Plaintiff and to all other members of the public, Defendant's vehicle collided with Plaintiff while plaintiff was in the intersection of Basse Road and Blanco Road, which foreseeably and proximately caused grievous bodily harm and other damage to Plaintiff as set forth in Paragraph V below.

IV

NEGLIGENCE PER SE

8. Defendant has violated §544.007 of the Texas Transportation Code by failing to yield the right-of-way to pedestrians lawfully in an intersection. Because of this violation, Defendant is guilty of negligence per se.

V

DAMAGES

9. Plaintiff sustained the following actual damages as a result of the actions and/or omissions of Defendant described hereinabove:

- (a) Lost earning capacity.
- (b) Reasonable medical care and expenses in the past.

VI

PRAYER FOR RELIEF

For the reasons stated, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendants, jointly and severally, for the sum of \$150,000.00.
2. Prejudgment interest as provided by law.
3. Attorney's fees.
4. Award(s) of exemplary damages against Defendant in a sum determined by the trier of fact.
5. Postjudgment interest as provided by law.
6. Costs of suit.
7. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,
Fx & Kx, P.C.

By: _____
Mark Kx

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