

[REDACTED]

PLAINTIFF

v. **PLAINTIFF'S MOTION TO DENY**
DEFENDANT [REDACTED] ELECTRIC COMPANY'S
MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT THEREOF

[REDACTED]

ELECTRIC COMPANY

DEFENDANT

Plaintiff, [REDACTED], through undersigned counsel, hereby moves to dismiss Defendant [REDACTED] Electric Company's Motion for Summary Judgment and states in support thereof as follows:

STATEMENT OF THE CASE

This action is before the Court on Plaintiff's claims for injuries sustained when her vehicle overturned after striking electrical wires, owned and maintained by Defendant, that had fallen across a public roadway at the intersection of Cane Run Road and Campground Road in Louisville on October 11, 2006.

FACTS IN CONTROVERSY

A call from Louisville MetroSafe to Defendant at 6:10:45 am on October 11, 2006, indicates that Defendant's wires were "pulled down by a semi."¹ Defendant speculates that "a tractor trailer struck and knocked down a utility pole on the corner of the intersection,"² but this speculation is not supported by evidence in the record. To the contrary, the description offered

¹ Defendant's Exhibit 2, Transcription of October 11, 2006 Louisville/ Metro Safe telephone call to Defendant Control Center, re: 3313 Campground Road.

² Defendant's Memorandum in Support of [REDACTED] Electric Company's Motion for Summary Judgment, at 1.

by the MetroSafe officer suggests that **a tractor trailer struck the wires directly** as the tractor trailer drove along a public roadway, and pulled the utility pole down with the wires. Further discovery is needed on this question of fact, as it goes directly to the issue of whether the Defendant breached its duty to Plaintiff to maintain the wires in a safe condition.

Moreover, the record indicates that on October 10, 2006 (the day before Plaintiff's car struck Defendant's electric wires), Defendant had placed a "caution" on circuit FA-1214, the circuit relating to the wires that caused Plaintiff's car to overturn.³ A call between the Defendant Load Dispatch Department (LDD) and the Defendant Distribution Control Center (DCC), placed at 6:09:12 am on October 11, 2006, concerning the system relay reveals the following:

DCC: Unless it's on the, Oh, I'll tell you what happened.

LDD: (Interrupting) It could be the re-close.

DCC: That caution wasn't removed yesterday.

LDD: Caution what?

DCC: I bet that caution wasn't ever removed yesterday.

LDD: From what I'm seeing here--it did. Now, it could be.

DCC: I bet it was never taken off last night.

DCC: Because I know the 1214 was on caution.

LDD: Let me take a look at it here real quick. I didn't see it on the screen so that's possible.

DCC: I'll bet that's what happened.

LDD: Was it supposedly released?

DCC: Yeah.

³ Defendant's Exhibit 5, Transcript of October 11, 2006 call from Defendant Load Dispatch Department (LDD) to Defendant Distribution Control Center (DCC) advising that a system relay had occurred, resulting in a power outage to several customers in area surrounding 3313 Campground Road.

LDD: Okay, hold on.

DCC: Yeah, it sure was.

LDD: Well I have control over here, and it's off on the screen here.

DCC: Hum.

LDD: And I'm not seeing it.

DCC: I guess I'd have one of your guys go out there, station guys to go out there and check it out.⁴

This conversation suggests that Defendant knew of a potential problem with the FA-1214 circuit **the day before** Plaintiff's vehicle struck the downed wires. Because the nature of that problem is not clear, further discovery is needed to determine whether Defendant's wires were in fact in a properly maintained, safe condition.

ARGUMENT

1. SUMMARY JUDGMENT STANDARD

"[T]rial judges are to refrain from weighing evidence at the summary judgment stage; [] they are to review the record after discovery has been completed to determine whether the trier of fact could find a verdict for the non-moving party." *Welch v. American Publishing Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999), citing *Steelevest v. Scansteel*, 807 S.W.2d 476, 482-483 (Ky. 1991). "[A] trial judge **must** view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted **only if it appears impossible** that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor." *First Federal Sav. Bank v. McCubbins*, 217 S.W.3d 201, 204 (Ky. 2006) [emphasis

⁴ *Id.*

added]. Below, Plaintiff applies the facts on the record to the law to demonstrate that summary judgment is inappropriate here.

2. SUMMARY JUDGMENT IS INAPPROPRIATE BECAUSE THERE EXIST GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER DEFENDANT BREACHED A DUTY OF CARE OWED TO PLAINTIFF

"The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists and then the burden shifts to the party opposing summary judgment to produce at least some affirmative evidence showing that there is a genuine issue of material fact requiring trial." *First Federal Sav. Bank v. McCubbins*, 217 S.W.3d 201, 204 (Ky. 2006).

Plaintiff has met her burden by producing the facts in controversy, outlined above, which constitute affirmative evidence showing that there are genuine issues of material fact in this case. First, the language of the MetroSafe report ("some wires...have just been pulled down by a semi"⁵) strongly suggests that the wires may have been hanging low enough over the roadway to have been struck directly by a passing tractor trailer. Second, the conversation between Defendant's LDD and DCC actors⁶ constitutes evidence that, prior to the morning of the accident, Defendant knew of a problem with the circuit relating to the wires that caused Plaintiff's car to overturn. These facts **contradict** the assertions of Defendant (1) that a tractor trailer struck an Defendant utility pole, rather than striking the overhanging wires themselves, and (2) that Defendant had no notice of problems with the wires in the circuit prior to the morning of the accident.

⁵ Defendant's Exhibit 2, Transcription of October 11, 2006 Louisville/ Metro Safe telephone call to Defendant Control Center, re: 3313 Campground Road.

⁶ Defendant's Exhibit 5, *supra* at fn. 3.

