

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - May 13, 2008

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2006-11954

DECISION & ORDER

Fidel Palma, appellant, v Gabriel A. Garcia, et al.,
defendants, Martha J. Castillo, respondent.

(Index No. 6627/04)

Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker and Roger Acosta of counsel), for appellant.

Kelly, Rode & Kelly, LLP, Mineola, N.Y. (Daniel E. Cerritos, Loris Zeppieri, and Susan M. Ulrich of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Weber, J.), dated December 7, 2006, as granted that branch of the motion of the defendant Martha J. Castillo which was for summary judgment dismissing the complaint insofar as asserted against her.

ORDERED that the order is affirmed insofar as appealed from, with costs.

On February 21, 2004, at approximately 6:25 A.M., the defendant Martha J. Castillo was driving northbound on a straight stretch of Park Avenue, in Huntington. The plaintiff was a front-seat passenger in Castillo's vehicle. The defendant Gabriel A. Garcia, who had not slept that night, was driving his vehicle southbound on Park Avenue. Garcia's vehicle crossed into the northbound lane, and Castillo jammed on her brakes, but her vehicle collided with Garcia's vehicle. The collision occurred entirely in the northbound lane. The defendant David Kamsler, who had been driving his car northbound on Park Avenue, about four or five carlengths behind Castillo's vehicle,

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at about the same speed, swerved and applied his brakes to avoid the accident, but struck Castillo's car, which was spinning as a result of the impact with Garcia's vehicle. The plaintiff, who allegedly was injured in the collisions, commenced this action against Garcia, Kamsler, and Castillo. Castillo moved for summary judgment, inter alia, dismissing the complaint insofar as asserted against her, arguing that she reacted reasonably to an emergency situation not of her own making. The Supreme Court granted the motion. We affirm.

“A driver is not obligated to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic. Such an event constitutes a classic emergency situation, thus implicating the ‘emergency doctrine’” (*Gajjar v Shah*, 31 AD3d 377, 377-378; see *Marsch v Catanzaro*, 40 AD3d 941, 942; *Lyons v Rumpler*, 254 AD2d 261, 262; *Williams v Econ*, 221 AD2d 429, 430; *Greifer v Schneider*, 215 AD2d 354, 356; *Gaeta v Morgan*, 178 AD2d 732, 734; *Moller v Lieber*, 156 AD2d 434, 435). Castillo established, prima facie, that she was confronted with an emergency situation not of her own making and that her reaction was reasonable under the circumstances (see *Gajjar v Shah*, 31 AD3d at 378). In opposition, the plaintiff failed to raise a triable issue of fact (see *Francis v Guzman*, _____AD3d_____, 2008 NY Slip Op 04315 [2d Dept 2008]). Consequently, the Supreme Court properly granted that branch of Castillo's motion which was for summary judgment dismissing the complaint insofar as asserted against her.

FISHER, J.P., SANTUCCI, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court