

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

D32089
Y/ct

_____AD3d_____

Submitted - June 24, 2011

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
ANITA R. FLORIO
PLUMMER E. LOTT, JJ.

2010-10223

DECISION & ORDER

Kathleen Cox, et al., appellants-respondents, v Thomas E. Weil, Jr., et al., defendants-respondents, Peter G. Meyer, respondent-appellant.

(Index No. 4178/05)

Joseph A. Miller III, West Sayville, N.Y., for appellants-respondents.

Zaklukiewicz, Puzo & Morrissey, LLP, Islip Terrace, N.Y. (Joseph M. Puzo of counsel), for respondent-appellant.

Schondebare & Korcz, Ronkonkoma, N.Y. (James A. Schondebare of counsel), for defendants-respondents Thomas E. Weil, Jr., Thomas E. Weil, Sr., and Leeann Weil.

Carman, Callahan & Ingham, LLP, Farmingdale, N.Y. (Michael F. Ingham and Peter F. Breheny of counsel), for defendant-respondent Enterprise Leasing Company (a Maryland Corporation), doing business as Enterprise Rent-A-Car.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Suffolk County (Pines, J.), dated September 16, 2010, as, upon a jury verdict, and upon the denial of their motion pursuant to CPLR 4404(a) to set aside so much of the verdict as found that the defendant Thomas E. Weil, Jr., was not negligent as contrary to the weight of the evidence, is in favor of the defendants Thomas E. Weil, Jr., and Enterprise Leasing Company (a Maryland Corporation), doing business as Enterprise Rent-A-Car, and against them, dismissing the action insofar as asserted against those defendants, and the defendant Peter G. Meyer cross-appeals, as limited by his brief, from so much of the same

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judgment as, in effect, upon the jury verdict, and upon the denial of his motion pursuant to CPLR 4404(a) to set aside so much of the verdict as found that the defendant Thomas E. Weil, Jr., was not negligent as contrary to the weight of the evidence, dismissed his cross claims against the defendants Thomas E. Weil, Jr., and Enterprise Leasing Company (a Maryland Corporation), doing business as Enterprise Rent-A-Car.

ORDERED that the judgment is affirmed insofar as appealed and cross-appealed from, with one bill of costs payable to the defendants-respondents by the appellants-respondents and respondents-appellants, appearing separately and filing separate briefs.

“A driver who has the right-of-way is entitled to anticipate that the other driver will obey traffic laws which require him or her to yield . . . At the same time, a driver who has the right-of-way has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection. There can be more than one proximate cause of an accident, and the issue of comparative negligence is generally a question for the jury to decide” (*Wilson v Rosedom*, 82 AD3d 970, 970 [citations and internal quotation marks omitted]; *see Shea v Judson*, 283 NY 393, 398). “[A] driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*Vainer v DiSalvo*, 79 AD3d 1023, 1024, quoting *Yelder v Walters*, 64 AD3d 762, 764).

Here, contrary to the contention of the plaintiffs and the defendant Peter G. Meyer, the jury’s determination that the defendant Thomas E. Weil, Jr., was not negligent in failing to avoid a collision with Meyer’s vehicle, which had driven through a red light, was based upon a fair interpretation of the evidence presented at trial (*see Lolik v Big V Supermarkets*, 86 NY2d 744, 746; *Nicastro v Park*, 113 AD2d 129, 132-134). Accordingly, the Supreme Court properly denied the plaintiff’s and Meyer’s respective motions pursuant to CPLR 4404(a) to set aside so much of the verdict as found that Weil was not negligent.

RIVERA, J.P., COVELLO, FLORIO and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court