

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

D34382
W/kmb

_____AD3d_____

Argued - January 3, 2012

MARK C. DILLON, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2010-07849

DECISION & ORDER

Roseanne Hendrickson, et al., plaintiffs, v Philbor Motors, Inc., doing business as Hempstead Ford, et al., defendants.
(Action No. 1)

William Malone, plaintiff, v Philbor Motors, Inc., doing business as Hempstead Ford, et al., defendants, Cooper Tire and Rubber Company, appellant, Rosanne Hendrickson, respondent.
(Action No. 2)

(Index Nos. 20507/07, 10700/08)

Devitt Spellman Barrett, LLP, Smithtown, N.Y. (Diane K. Farrell and David H. Arntsen of counsel), for appellant.

Andrea G. Sawyers, Melville, N.Y. (Scott W. Driver of counsel), for respondent.

In two related actions to recover damages for personal injuries, etc., which were joined for trial, Cooper Tire and Rubber Company, a defendant in both actions, appeals from an order of the Supreme Court, Nassau County (K. Murphy, J.), entered June 22, 2010, which granted the motion of Roseanne Hendrickson for summary judgment dismissing the complaint and all cross claims insofar as asserted against her in Action No. 2.

ORDERED that the appeal from so much of the order as granted those branches of the motion of Roseanne Hendrickson which were for summary judgment dismissing the complaint and the cross claims of Philbor Motors, Inc., doing business as Hempstead Ford, and Ford Motor

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Company insofar as asserted against her in Action No. 2 is dismissed, as the defendant Cooper Tire and Rubber Company is not aggrieved by those portions of the order (*see CPLR 5511; Mixon v TBV, Inc.*, 76 AD3d 144, 159); and it is further,

ORDERED that the order is reversed insofar as reviewed, on the law, and that branch of the motion of Roseanne Hendrickson which was for summary judgment dismissing the cross claims of the defendant Cooper Tire and Rubber Company insofar asserted against her in Action No. 2 is denied; and it is further,

ORDERED that one bill of costs is awarded to the appellant.

“Under the emergency doctrine, ‘when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context’” (*Miloscia v New York City Bd. of Educ.*, 70 AD3d 904, 905, quoting *Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327; *see Williams v City of New York*, 88 AD3d 989). “This is not to say that an emergency automatically absolves one from liability for his [or her] conduct. The standard then still remains that of a reasonable [person] under the given circumstances, except that the circumstances have changed” (*Ferrer v Harris*, 55 NY2d 285, 293; *see Pawlukiewicz v Boisson*, 275 AD2d 446, 447). “Both the existence of an emergency and the reasonableness of a party’s response thereto will ordinarily present questions of fact” (*Williams v City of New York*, 88 AD3d at 990; *see Crawford-Dunk v MV Transp., Inc.*, 83 AD3d 764).

Although the defendant Roseanne Hendrickson established that she was confronted with an emergency situation when the tire of the vehicle she was driving suddenly blew out, she failed to meet her prima facie burden of establishing that her subsequent actions were reasonable as a matter of law (*see Zuckerman v City of New York*, 49 NY2d 557, 560). Accordingly, that branch of her motion which was for summary judgment dismissing the cross claims asserted against her by the defendant Cooper Tire and Rubber Company (hereinafter Cooper Tire) should have been denied. In light of this determination, we need not examine the sufficiency of the papers submitted in opposition to her motion (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Cooper Tire’s remaining contention is not properly before this Court.

DILLON, J.P., LOTT, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

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