



swerving to miss and started to apply the brakes," he saw a car stopped in the center lane, dead ahead of him. Unable to slow down or pull over into another lane in time to avoid a collision, plaintiff rear-ended the disabled car, which was owned and driven by Stephen Corbett. Plaintiff was wearing a seat belt and his automobile's airbag deployed upon impact. Nonetheless, his head struck the steering wheel with sufficient force to impair his right eye permanently.

On June 27, 2002, plaintiff, with his wife suing derivatively, commenced a lawsuit against Corbett for damages caused by the automobile accident, alleging that he had suffered a serious injury within the meaning of the No-Fault Law (see Insurance Law § 5102[d]). During the course of discovery, Corbett testified at an examination before trial that, just before his car slid to a standstill, he heard a rumbling noise and experienced difficulty steering; he observed pieces of the vehicle's transmission rolling down the road. When he inspected his car just after the accident, he saw that the front right wheel was "sideways with the inside of it facing forward," and a half shaft, the driveshaft linking this wheel to the transmission, was disconnected and dangling from the vehicle's undercarriage.

Plaintiffs subsequently learned that on June 13, 2001, about two months before the accident, a mechanic employed by defendant Good & Fair Carting & Moving, Inc., had performed the

required annual New York State motor vehicle inspection of Corbett's car, and had issued the certificate denoting that the car was in proper and safe working condition. On June 10, 2004, plaintiffs commenced this action against Good & Fair, alleging that the collision was caused by its negligent inspection of the Corbett vehicle.

On August 2, 2005, Good & Fair moved for summary judgment to dismiss the complaint on the ground that it owed no contractual or common law duty to plaintiffs or, alternatively, breached no such duty. Plaintiffs opposed the motion. While acknowledging that Good & Fair would ordinarily owe no duty to third parties lacking contractual privity with Corbett, they claimed that this case was an exception to the general rule because Good & Fair launched an instrument of harm, and they detrimentally and reasonably relied on Good & Fair's inspection.

On November 10, 2005, Supreme Court denied Good & Fair's motion, citing the Appellate Division's decision in Wood v Neff (250 AD2d 225 [3rd Dept 1998]) as controlling authority for the proposition that "an inspector's duties under the Vehicle and Traffic Law . . . extend to third parties as it is reasonably foreseeable that someone, other than [the] owner, may be injured in an accident because of a defect in a motor vehicle." Importantly, however, Wood was handed down before our decisions in Espinal v Melville Snow Contrs. (98 NY2d 136 [2002]) and Church v Callanan Indus. (99 NY2d 104 [2002]). Nonetheless, the

trial court opined that it "ha[d] no alternative but to apply [Wood] . . . and conclude that there is a duty under the law, the breach of which may be the basis for a finding of negligence against" Good & Fair.

On September 22, 2006, the Appellate Division unanimously reversed Supreme Court's order on the law, granted the motion for summary judgment and dismissed the complaint. Citing several of our cases, most notably Espinal and Church, the court found no basis for deviating from the general rule that "recovery for negligent performance of a contractual duty is limited to an action for breach of contract, and a party to a contract is not liable in tort to noncontracting third parties" (Stiver v Good & Fair Carting & Moving, Inc., 32 AD3d 1209, 1210 [4th Dept 2006]). We granted plaintiffs' motion for leave to appeal, and now affirm.

"[A] contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party" (Espinal, 98 NY2d at 138; see also Church, 99 NY2d at 111 ["(O)rdinarily, breach of a contractual obligation will not be sufficient in and of itself to impose tort liability to noncontracting third parties upon the promisor"]). We have identified only three exceptions to this general rule, which we summarized in Espinal. These are

"(1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, 'launches a force or instrument of harm' [quoting Moch Co.,

Inc. v Rensselaer Water Co., 247 NY 160, 168 (1928)]; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties [citing Eaves Brooks Costume Co. v Y.B.H. Realty Corp., 76 NY2d 220, 226 (1990)] and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely [citing Palka v Servicemaster Mgt. Servs. Corp., 83 NY2d 579, 589 (1994)]"

(Espinal, 98 NY2d at 140; see also Church, 99 NY2d at 112-113). Good & Fair's allegedly negligent inspection does not match any of these exceptions.

First, Good & Fair cannot be said to have launched an instrument of harm since there is no reason to believe that the inspection made Corbett's vehicle less safe than it was beforehand (see Church, 99 NY2d at 112). Inspecting the car did not create or exacerbate a dangerous condition (see Espinal, 98 NY2d at 142-143). Second, there was no detrimental reliance. The plaintiff driver did not know whether or when the Corbett vehicle had been inspected. He had never seen the vehicle before the accident, and had no relationship to its owner. Moreover, as Good & Fair observes, there are vehicles on the road, including many vehicles registered in other states, which have not passed a New York State motor vehicle safety inspection. As for the third exception, we cannot reach it in this case. The Appellate Division correctly determined that it was unpreserved for review.

Finally, as a matter of public policy, we are unwilling to force inspection stations to insure against risks "the amount

of which they may not know and cannot control, and as to which contractual limitations of liability [might] be ineffective" (Eaves Brooks, 76 NY2d at 227). If New York State motor vehicle inspection stations become subject to liability for failure to detect safety-related problems in inspected cars, they would be turned into insurers. This transformation would increase their liability insurance premiums, and the modest cost of a State-mandated safety and emission inspection (\$12 at the time of the inspection in this case) would inevitably increase.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

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Order affirmed, with costs. Opinion by Judge Read. Chief Judge Kaye and Judges Ciparick, Graffeo, Smith and Jones concur. Judge Pigott took no part.

Decided November 19, 2007