

S C A W

SHORT FORM ORDER

SUPREME COURT-STATE OF NEW YORK

PRESENT:

HON. BRUCE D. ALPERT

Justice

TRIAL/IAS, PART 9

MARK LIGUORI, as Administrator of the Estate of
JOSEPH LIGUORI, deceased, and LENA LIGUORI,

MOTION SEQUENCE #s 2-4

Plaintiff,

INDEX NO. 27035/99

-against-

MOTION DATE: May 22, 2001

STELLA M. GORDON, SCOTT W. GORDON,
BRAD T. RAMSLAND, EDWIN B. DONALD, JR.,
MICHAEL A. TURANO, VETERANS
TRANSPORTATION CO., INC. and KENNETH
HILLS,

Defendants.

The following papers read on these applications for summary judgment pursuant to CPLR 3212:

Notice of Motion	X
Notice of Cross-motion	XX
Opposing Affirmations	XX
Reply Affirmation	X

Upon the foregoing papers it is ordered that the motion-in-chief by defendants, Edwin B.

Donald and Michael A. Turano, the cross-motion by defendant, Brad Ramsland, and the cross-motion by defendants Veterans Transportation Co., Inc. and Kenneth Hills, for the summary dismissal of the plaintiffs' complaint and the cross-claims asserted against the respective moving parties, are granted.

This is an action to recover damages for the wrongful death of Joseph Liguori and the severe physical injuries of plaintiff, Lena Liguori, resulting from a multi-vehicle motor vehicle accident on July 13, 1998. While traveling north on Peninsula Boulevard in Rockville Centre, the Liguori Buick Park Avenue was hit head-on by an Acura operated and owned by defendants Scott W. Gordon and Stella M. Gordon, respectively. After the initial impact the Liguori vehicle was rear-ended by a school bus owned and operated by defendants, Veterans Transportation Co., Inc. (hereinafter "Vets"), and Kenneth Hills, respectively.

All of the witnesses described the accident similarly at their examinations before trial. The undisputed facts reveal that the Liguori vehicle was heading north on Peninsula Boulevard in the right hand lane followed by the Vets' school bus van for about 10 minutes. They were traveling at a rate of approximately 30 m.p.h., with the Vets' school bus was traveling about three car lengths behind. The Gordon Acura crossed over the grass median which separated the opposing lanes of traffic along Peninsula Boulevard and came into contact with the Ford Expedition, operated by defendant Ramsland, which had been traveling left north-bound lane thereof. The Gordon Acura then spun out of control and struck the plaintiffs' vehicle head-on, which was then rear-ended by the Vets' school bus.

The bus driver, Kenneth Hills, testified at his examination before trial that when he saw the

Gordon Acura headed for the Liguori vehicle, he applied his brakes and steered to the left, but was unable to avoid contact with the latter. Defendant Turano, the operator of a Honda Civic owned by defendant Donald, was traveling behind the Ramsland Ford Expedition when it was hit by the Gordon Acura.

Defendant Gordon pled guilty to criminally negligent homicide as a result of driving at an excessive speed and was sentenced to a term in jail.

Though the plaintiffs have discontinued their action against defendants Ramsland, Turano and Donald, the cross-claims advanced by defendants Vets and Hills and those asserted by defendants Gordon remain in place.

“It is well settled that an emergency occurs when one is confronted with a sudden and unexpected event or combination of events not of one’s own making which leaves little or no time for reflection or deliberate judgment (*citations omitted*).” (**Mehring v Cahill**, 271 AD2d 415) “It is axiomatic that a driver is not required to anticipate that an automobile traveling in the opposite direction will cross over into oncoming traffic (*citations omitted*). Such a scenario presents an emergency situation and the actions of the driver presented with such a situation must be judged in that context (*citation omitted*).” (**Foresto v Long Island Lighting Company**, 272 AD2d 514, 514-515) “[A] driver confronted with such a sudden emergency situation is under no obligation to use his best judgment, and any error in his judgment is generally insufficient to constitute negligence (*citations omitted*).” (**Velez v Diaz**, 227 AD2d 615)

However “[a] driver confronted with an emergency situation may still be found to be at fault for the resulting accident where his or her reaction is found to be unreasonable or where the prior tortious conduct of the driver contributed to bringing about the emergency (*citations omitted*).” (**Mehring v Cahill, supra**) Nevertheless, “[t]he failure of a driver not otherwise negligent who encounters a car [that crossed-over] to avert the consequence of such an emergency can seldom be considered negligence (*citations omitted*).” (**Wright v Morozinis, 220 AD2d 496, 497**)

None of the witnesses saw the Donald/Turano or the Ramsland vehicles make contact with the Liguori vehicle, and, in fact, no one attributed any negligent conduct whatsoever to them. The applications by defendants Donald, Turano and Ramsland for summary judgment are, accordingly, granted, and the complaint and all cross-claims against them are dismissed. (see, **Mehring v Cahill, supra; Wright v Morozinis, supra**).

Application of the emergency doctrine also requires dismissal of the complaint and all cross-claims against defendants Vets & Hills. The evidence presented establishes that defendant Hills was faced with a sudden, unanticipated situation which required an instantaneous reaction. In applying his brakes and steering in an attempt to avoid a collision with the Liguori vehicle, he reacted reasonably to the emergency which confronted him. Any error of judgment on his part under the emergency circumstances presented cannot be construed as negligence. (see, **Mehring v Cahill, supra, see also, Stoebe v Norton, 278 AD2d 484; Turner v Mongitore, 274 AD2d 512; Foresto v Long Island Lighting Company, supra; Lyons v Rumpler, 254 AD2d 261**)

The expert's affidavit submitted by the plaintiffs in an attempt to defeat the application of the emergency doctrine to defendants Hills and Vets must be rejected.

“Mere speculation that [Hills] may have failed to take some unspecified accident avoidance measures or in some other way contributed to the occurrence of the accident, without evidentiary support in the record, is insufficient to defeat a motion for summary judgment (*citations omitted*).”

(**Mehring v Cahill**, *supra*, at pp. 415-416; see also, **Lyons v Rumpler**, *supra*.)

The expert's conclusion that defendant Hills was following the Liguori vehicle too closely is simply not supported by the evidence. Plaintiffs have, accordingly, failed to raise a question of fact.

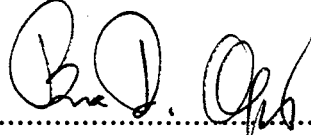
The reliance by defendants Gordon on the deposition testimony of plaintiff, Lena Liguori, is unavailing. She repeatedly stated that she could not say how much time elapsed between the first and second impacts. Only when forced to give an answer did she state that it may have been two to four seconds. In any event, under these circumstances, that would not suffice to impose negligence on defendant Hills. Thus, they, too, have failed to raise an issue of fact as to the negligence and concomitant liability of defendants Hills and Vets.

Accordingly, the complaint and all cross-claims against defendants, Hills and Veterans Transportation Co., Inc., are dismissed.

While the assertion that the Gordon operator crossed over into the oncoming traffic as a result of being cut off by a station wagon may possibly be advanced at trial (see, **Silvera v Agent Executive**, 226 AD2d 361; **Dutcher v Fetcher**, 183 AD2d 1052), it cannot serve to deprive the moving

defendants' of a disposition in their favor as they were free of negligence as a matter of law.

DATED: July 13, 2001


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J.S.C.

ENTERED

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