

170 A.D.3d 676
Supreme Court, Appellate Division, Second Department, New York.

Patricia GUTE, et al., Appellants,
v.
GREASE KLEENERS, INC., et al., Respondents.

2018-03671
|
(Index No. 1666/15)
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Submitted—November 1, 2018
|
March 6, 2019

	Genuine issue of material fact existed as to whether southbound motorist, who negligently crossed median and was proximate cause of initial impact in multivehicle accident, was presented with emergency situation and acted as reasonable person would under circumstances, precluding summary judgment on issue of liability; evidence submitted by motorist suggested he had no reason to suspect ice would be present on roadway, and that presence of ice was sudden and unexpected. Cases that cite this headnote
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[3]	Judgment Torts
	On motion for summary judgment on issue of liability in motor vehicle collision, deposition testimony as to whether driver was presented with emergency situation and reacted as reasonable person under circumstances, was insufficient to establish northbound motorist's prima facie entitlement to judgment as a matter of law, where driver's testimony suggested he had no reason to suspect ice would be present on roadway, and that presence of ice was sudden and unexpected. Cases that cite this headnote

Attorneys and Law Firms

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DeSena & Sweeney, LLP, Bohemia, N.Y. ([Shawn P. O'Shaughnessy](#) of counsel), for respondents **Grease Kleeners, Inc.**, and Robert A. Flynn.

Picciano & Scahill, P.C., Bethpage, N.Y. (Andrea E. Ferrucci of counsel), for respondent Christopher Romano.

[LEONARD B. AUSTIN](#), J.P., [SYLVIA O. HINDS-RADIX](#), [JOSEPH J. MALTESE](#), [LINDA CHRISTOPHER](#), JJ.

DECISION & ORDER

676** In an action to recover damages for personal injuries, etc., ***677** the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Peter H. Mayer, J.), dated *72** January 30, 2018. The order, insofar as appealed from, denied the plaintiffs' motion for summary judgment on the issue of liability against the defendants **Grease Kleeners, Inc.**, and Robert A. Flynn, and the plaintiffs' separate motion for summary judgment on the issue of liability against the defendant Christopher Romano.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the defendants appearing separately and filing separate briefs.

On December 8, 2014, the plaintiff Patricia Gute (hereinafter the injured plaintiff) was operating a vehicle northbound on Patchogue–Holbrook Road in Suffolk County, when a vehicle operated by the defendant Christopher Romano, which was traveling southbound, lost control due to ice on the roadway and crossed over into the injured plaintiff's lane of travel, striking her vehicle head-on and causing her vehicle to spin counterclockwise. The defendant Robert A. Flynn, who was operating a vehicle owned by his employer, the defendant **Grease Kleeners, Inc.** (hereinafter **Grease Kleeners**), was traveling behind the injured plaintiff's vehicle in the same lane at the time of the initial collision. Flynn testified at his deposition that as soon as he observed Romano's vehicle cross over into his lane of travel, he applied his brakes and attempted to steer to his right but began to slide on ice on the roadway. As a result of the initial impact between the injured plaintiff's vehicle and Romano's vehicle, Flynn's vehicle, sliding on the icy roadway, struck the injured plaintiff's vehicle despite Flynn's attempts to avoid it. The injured plaintiff, and her husband suing derivatively, commenced this personal injury action against the defendants. After issue was joined by the defendants, the plaintiffs moved for summary judgment on the issue of liability against **Grease Kleeners** and Flynn, and separately moved for summary judgment on the issue of liability against Romano. The Supreme Court, among other things, denied both motions, and the plaintiffs appeal.

[1] [2] With respect to the plaintiffs' motion for summary judgment on the issue of Romano's liability, they established their prima facie entitlement to judgment as a matter of law by demonstrating that Romano's negligence, in violating [Vehicle and Traffic Law § 1126\(a\)](#) by crossing over the median and entering the opposite lane of traffic in which the injured plaintiff's vehicle had been traveling, was a proximate cause of the initial impact in this multivehicle accident (see [Browne v. Logan Bus Co., Inc.](#), 156 A.D.3d 856, 857, 65 N.Y.S.3d 780; ***678** [Pearson v. Northstar...](#)

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... and whether he reacted as a reasonable person would under the circumstances (see [Motta v. Gomez](#), 161 A.D.3d 725, 726, 72 N.Y.S.3d 840; [Firayner v. Castro](#), 145 A.D.3d 756, 757, 43 N.Y.S.3d 137; [Mitchell v. City of New York](#), 89 A.D.3d 1068, 1069, 933 N.Y.S.2d 405). The evidence submitted by Romano in opposition suggested that he had no reason to suspect that ice would be present on the roadway, and that its presence was sudden and unexpected (see [Kandel v. FN; Taxi, Inc.](#), 137 A.D.3d 980, 982, 27 N.Y.S.3d 605). Accordingly, we agree with the Supreme Court's determination to deny the plaintiffs' motion for summary judgment on the issue of Romano's liability.

****73** [3] With respect to the plaintiffs' separate motion for summary judgment on the issue of liability against **Grease Kleeners** and Flynn, the plaintiffs failed to demonstrate their prima facie entitlement to judgment as a matter of law. The evidence submitted by the plaintiffs failed to demonstrate, prima facie, that Flynn was at fault in his collision with the injured plaintiff's vehicle. Rather, the evidence submitted by the plaintiffs, which included the deposition testimony of the injured plaintiff and Flynn, demonstrated the existence of triable issues of fact as to whether Flynn was also presented with an emergency situation and whether he reacted as a reasonable person would under the circumstances. Flynn's deposition testimony also suggested that he had no reason to suspect that ice would be present on the roadway, and that its presence was

sudden and unexpected. Since the plaintiffs failed to establish their prima facie entitlement to judgment as a matter of law on the issue of liability against **Grease Kleeners** and Flynn, we need not consider the sufficiency of the papers in opposition (see *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642). Accordingly, we agree with the Supreme Court's determination to deny the plaintiffs' motion for summary judgment on the issue of liability against **Grease Kleeners** and Flynn.

AUSTIN, J.P., HINDS-RADIX, MALTESE and CHRISTOPHER, JJ., concur.

All Citations

170 A.D.3d 676, 96 N.Y.S.3d 70, 2019 N.Y. Slip Op. 01571

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