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Trials &TRIBULATIONS

Court of Appeals shifts its view in comparative negligence cases

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In an April 3, 2018 Opinion written by Judge Feinman, with Judges Rivera, Fahey and Wilson concurring, the New York Court of Appeals determined an issue that had, in their words, "perplexed courts for some time." *Rodriguez v. City of New York*, No. 32, 2018 WL 1595658, at *1 (N.Y. Apr. 3, 2018). The Court held that a plaintiff in a negligence action is not required to prove an absence of comparative negligence to prevail on a partial motion for summary judgment as to a defendant's liability. Judge Garcia dissented in an Opinion in which Chief Judge DiFiore and Judge Stein concurred.

The case arose after the plaintiff Carlos Rodriguez ("Plaintiff") suffered a spinal injury while working for the New York City Department of Sanitation. The injury left him permanently disabled from working. Plaintiff suffered the injury while "'outfitting' a sanitation truck with tire chains" while a snow storm was in progress. Plaintiff was standing between a car and a rack of tires at the time of the accident. When the driver of the sanitation truck began to back the truck into the bay to be fitted, the truck skidded and hit the car, propelling it into Plaintiff and causing the injury. There was evidence that one of Plaintiff's coworkers violated Department of Sanitation safety practices just before the accident. *Id.* at *1.

Following discovery, Plaintiff moved for partial summary judgment on liability. Supreme Court denied the motion holding that there were issues of fact as to causation, and the Appellate Division First Department affirmed. *Id.* at *7. Relying on *Thoma v. Ronai*, 82 NY2d 736 (1993), the Appellate Division held, in part, that Plaintiff had not satisfied his burden "because he failed to make a prima facie showing that he was free of comparative negligence." *Rodriguez*, 2018 WL 1595658 at *2. The Appellate Division certified the question of whether the order affirming Supreme Court's denial of summary judgment was properly made. *Id.* The Court of Appeals interpreted the certified question to be whether a plaintiff must "demonstrate the absence of his or her own negligence to be entitled to summary judgment as to a defendant's liability." *Id.*

In *Thoma v. Ronai*, the Court of Appeals held that the plaintiff in that case was not entitled to summary judgment on liability because there were issues of fact as to her own comparative negligence. 82 NY2d at 737. The Dissent in the Rodriguez case, citing *Thoma* and its progeny, argued that this particular issue had already been decided by the Court. Notably, as recently as 2016, the Court of Appeals denied summary judgment where there were issues of fact relating to a Plaintiff's comparative negligence. *Castiglione v. Kruse*, 27 N.Y.3d 1018, 1019, reargument denied, (2016). As the Dissent noted:

Accordingly, the issue of whether a plaintiff is entitled to summary judgment without showing freedom from comparative fault is settled, and the Appellate Division Departments have, for the most part, been applying that precedent. Since *Thoma*, each Department has held that a plaintiff is precluded from obtaining summary judgment where issues of fact exist concerning comparative fault.

Rodriguez, 2018 WL 1595658, at *8.

The Dissent also noted that the issue of a plaintiff's comparative negligence is typically intertwined with the factual issues of a defendant's negligence and that negligence cases are typically ill suited to summary judgment. Thus, the Dissent would have affirmed the Appellate Division's decision and allowed the issue of comparative negligence to proceed to the jury.

Nevertheless, the Court of Appeals shied away from its precedent and looked to the text of Article 14-A of the CPLR to answer the certified question in the negative. *Rodriguez*, 2018 WL 1595658, at *2. The Court reasoned that a plaintiff's comparative negligence was an affirmative defense and not a total bar to recovery and they held that "[p]lacing the burden on the plaintiff to show an absence of comparative fault [to obtain partial summary judgment on liability] is inconsistent with the plain language of CPLR 1412." *Id.* at 3. Comparative fault, they reasoned, is a matter of damages, not liability. *Id.*

The Court of Appeals dismissed *Thoma*, finding that it had not addressed the precise question before the Court in this appeal. Specifically, the Court held that the *Thoma* case had not considered the meaning and import of Article 14-A of the CPLR. *Id.* at *5. The Court further held: "Thus,

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to the extent that the Departments of the Appellate Division have interpreted *Thoma* as explicitly holding that a plaintiff must show an absence of comparative fault in order to obtain partial summary judgment on liability, such a reading of *Thoma* is mistaken." *Id.*

Going forward, Plaintiffs may have an additional weapon in their arsenal in prosecuting negligence actions and in obtaining settlements before trial following a successful motion for summary judgment on liability. Practitioners on both sides of the bar should review the *Rodriguez* opinion to determine whether and to what extent it should alter your litigation strategy.

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