SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

943

CA 20-00112

PRESENT: CENTRA, J.P., NEMOYER, WINSLOW, AND BANNISTER, JJ.

ABLE MEDICAL TRANSPORTATION, INC., AND
WILLIAM TADDEO, INDIVIDUALLY, AND AS SOLE
SHAREOWNER OF ABLE MEDICAL TRANSPORTATION, INC.,
PLAINTIFFS-RESPONDENTS,

V   MEMORANDUM AND ORDER

PARAGON ENVIRONMENTAL CONSTRUCTION, INC.,
DEFENDANT-APPELLANT.

SMITH, SOVIK, KENDRICK & SUGNET, P.C., SYRACUSE (MARLA RAUS OF
COUNSEL), FOR DEFENDANT-APPELLANT.

THE MATHEWS LAW FIRM, SYRACUSE (DANIEL F. MATHEWS, III, OF COUNSEL),
FOR PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Onondaga County
(Anthony J. Paris, J.), entered January 13, 2020. The order, insofar
as appealed from, denied defendant's motion for summary judgment
dismissing the complaint and granted in part plaintiffs' cross motion
for partial summary judgment.

It is hereby ORDERED that the order insofar as appealed from is
unanimously reversed on the law without costs, the cross motion is
denied in its entirety, the motion is granted and the complaint is
dismissed.

Memorandum: Plaintiffs commenced this action seeking damages for
purely economic losses alleged to have resulted from a motor vehicle
accident involving an employee of plaintiff Able Medical
Transportation, Inc. (Able Medical) and an employee of defendant.
During the incident, defendant's employee was standing on the shoulder
of an interstate highway after having pulled over the 10-wheel dump
truck he was driving because two rear wheels had fallen off of it.
Meanwhile, an employee of Able Medical was driving a van owned by Able
Medical, and the van struck one of the wheels that had fallen off of
the dump truck, and then struck defendant's employee. Defendant's
employee commenced an action against, inter alia, Able Medical, and
that action was settled for a sum of $900,000. In this action,
plaintiffs alleged in their complaint that the settlement in
defendant's employee's action resulted in an unsustainable increase in
insurance premiums that eventually caused plaintiffs to close their
business. Defendant moved for summary judgment dismissing the
complaint on the ground that, inter alia, defendant did not

proximately cause plaintiffs' alleged injuries, and plaintiffs cross-
moved for partial summary judgment on the issue of liability.
Defendant now appeals from an order to the extent that it denied its
motion and granted plaintiffs' cross motion in part. We reverse the
order insofar as appealed from.

Defendant met its initial burden on its motion by establishing as
a matter of law that plaintiffs' alleged economic damages resulting
from Able Medical having gone out of business were not proximately
caused by defendant's alleged negligent maintenance of its truck (*see
generally Williams v State of New York*, 18 NY3d 981, 982-984 [2012],
rearg denied 19 NY3d 956 [2012]). Here, plaintiffs' theory of
causation is based on a lengthy chain of events spanning the course of
two and a half years. In their complaint, plaintiffs alleged that
defendant failed to maintain its truck, that rear wheels fell off of
the truck causing a motor vehicle accident, that the accident resulted
in a lawsuit, and that the settlement of the lawsuit ultimately
resulted in an increase in insurance premiums for plaintiffs, which
caused plaintiffs to close their business. On its motion, defendant
established that those alleged economic injuries were not a
foreseeable consequence of defendant's alleged negligent maintenance
of its truck and, thus, the connection between defendant's activities
and plaintiffs' economic losses is too tenuous and remote to permit
recovery (*see generally Dunlop Tire & Rubber Corp. v FMC Corp.*, 53
AD2d 150, 154-155 [4th Dept 1976]). Inasmuch as plaintiffs, in
opposition to the motion, failed to raise an issue of fact on the
issue of proximate causation, we conclude that defendant is entitled
to summary judgment dismissing the complaint (*see generally Zuckerman
v City of New York*, 49 NY2d 557, 562 [1980]).

Entered: April 30, 2021   Mark W. Bennett
                                                 Clerk of the Court