

Fredericka Lumley, Respondent, v. General Mills, Inc., et al., Appellants, et al., Defendant.
61007

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

240 A.D.2d 201; 658 N.Y.S.2d 32; 1997 N.Y. App. Div. LEXIS6160

June 10, 1997, Decided
June 10, 1997, ENTERED

COUNSEL: **[**1]** For Plaintiff-Respondent: Lisa Solomon.

For Defendants-Appellants: Charles T. Glaws.

JUDGES: Concur--Sullivan, J. P., Milonas, Rosenberger, Ellerin and Mazzarelli, JJ.

OPINION: **[*32]** Order, Supreme Court, Bronx County (Alan Saks, J.), entered May 29, 1996, which denied the motion of defendants General Mills, Inc. and Lewis A. Wilmott for summary judgment dismissing the complaint

as against them, unanimously affirmed, without costs.

Triable issues of fact remain concerning whether the driver of the vehicle that was struck in a rear-end collision was negligent in that amongst other things he was tailgating at an inappropriate rate of speed and made a sudden stop; and whether such negligence, if any, contributed to the collision (see, *Malekan v City Harvest*, 234 AD2d 94; see also, *Darmento v Pacific* **[*33]** *Molasses Co.*, 81 NY2d 985).

Concur--Sullivan, J. P., Milonas, Rosenberger, Ellerin and Mazzarelli, JJ.