

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D22213
W/kmg

_____AD3d_____

Submitted - January 27, 2009

PETER B. SKELOS, J.P.
DAVID S. RITTER
ANITA R. FLORIO
HOWARD MILLER, JJ.

2008-01690

DECISION & ORDER

Raul Quinones, et al., plaintiffs-respondents, v
Robert Nugent, et al., defendants-respondents,
J & C Car Wash, Inc., appellant.

(Index No. 35539/04)

Hammill, O'Brien, Croutier, Dempsey & Pender, P.C., Syosset, N.Y. (Anton Piotroski of counsel), for appellant.

Richard T. Lau, Jericho, N.Y. (Gene W. Wiggins of counsel), for plaintiff-respondent Raul Quinones.

In an action, inter alia, to recover damages for personal injuries, the defendant J & C Car Wash, Inc., appeals from an order of the Supreme Court, Kings County (Balter, J.), dated January 16, 2008, which denied its motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it.

ORDERED that the order is reversed, on the law, with one bill of costs, and the motion of the defendant J & C Car Wash, Inc., for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is granted.

The plaintiffs allegedly were injured when a vehicle in which they were sitting was struck by a dump truck owned by the defendant Nugent Trucking, Inc., and operated by the defendant Robert Nugent. Just prior to the accident, the vehicle was serviced by the defendant J & C Car Wash, Inc. (hereinafter J & C). The plaintiffs alleged that J & C was liable in the happening of the accident because one of its employees negligently parked the vehicle on the street "in a position

February 24, 2009

Page 1.

QUINONES v NUGENT

of danger.” The Supreme Court denied J & C’s motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. We reverse.

J & C demonstrated its prima facie entitlement to judgment as a matter of law with evidence that the area of the accident identified by the plaintiffs was a legal parking space, and that any parking of the plaintiffs’ vehicle in that area merely furnished the condition or occasion for the occurrence of the event, and was not a proximate cause of the plaintiffs’ damages (*see Wechter v Kelner*, 40 AD3d 747; *Szczotka v Adler*, 291 AD2d 444). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Szczotka v Adler*, 291 AD2d 444). Thus, J & C’s motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against it should have been granted.

SKELOS, J.P., RITTER, FLORIO and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court