

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

D22287
Y/hu

_____AD3d_____

Argued - January 12, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2008-04390

DECISION & ORDER

Antonina Yavkina, et al., plaintiffs-respondents,
New York City Police Department, defendant
third-party plaintiff-respondent; et al., defendant,
Federal Express Corporation, third-party defendant-
appellant.

(Index No. 39099/1999)

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (John Sandercock and Steven B. Prystowsky of counsel), for third-party defendant-appellant.

Ofshtein & Ross, P.C., Brooklyn, N.Y. (Stuart K. Gechlik of counsel), for plaintiffs-respondents.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Alan G. Krams of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, the third-party defendant Federal Express Corporation appeals from an order of the Supreme Court, Kings County (Miller, J.), dated March 31, 2008, which denied its motion for summary judgment dismissing the third-party complaint and cross claims insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the third-party defendant's motion for summary judgment dismissing the third-party complaint, as the third-party defendant failed to submit evidence sufficient to demonstrate its prima facie entitlement to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Adams v Lemberg Enters., Inc.*, 44 AD3d 694).

March 3, 2009

Page 1.

YAVKINA v NEW YORK CITY POLICE DEPARTMENT

“[O]wners of improperly parked cars may be held liable to plaintiffs injured by negligent drivers of other vehicles, depending on the determinations by the trier of fact on the issues of foreseeability and proximate cause unique to the particular case” (*Reuter v Rodgers*, 232 AD2d 619; *see Sommersall v New York Tel. Co.*, 52 NY2d 157, 167). The issue of whether the third-party defendant’s employee was negligent in double-parking his delivery truck and, if so, whether the negligence was a proximate cause of the accident should be submitted to the jury (*see Ferrer v Harris*, 55 NY2d 285, 293-294; *Adams v Lemberg Enters., Inc.*, 44 AD3d at 694; *Petrone v County of Nassau*, 305 AD2d 569; *Murray-Davis v Rapid Armored Corp.*, 300 AD2d 96; *Jordan v Aviles*, 288 AD2d 347, 348; *Giordano v Sheridan Maintenance Corp.*, 38 AD2d 552, 553).

The third-party defendant’s remaining contentions are without merit.

SPOLZINO, J.P., SANTUCCI, BALKIN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court