

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

D25646  
W/kmg

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Argued - December 8, 2009

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

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2009-06883

DECISION & ORDER

Jose M. Martinez, appellant, v Mizhquiri  
Transportation, Inc., et al., respondents.

(Index No. 12927/08)

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Weiss & Rosenbloom, P.C., New York, N.Y. (Erik L. Gray of counsel), for appellant.

Morici & Morici, LLP, Garden City, N.Y. (William B. Baier of counsel), for  
respondents Mizhquiri Transportation, Inc., and Manuel Jiminez.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated June 11, 2009, which denied his motion for summary judgment on the issue of liability, with leave to renew after the depositions of the parties.

ORDERED that the order is affirmed, with one bill of costs to the respondents Mizhquiri Transportation, Inc., and Manuel Jiminez.

The plaintiff, a passenger in a vehicle owned by the defendant Mizhquiri Transportation, Inc., and operated by the defendant Manuel Jimenez, allegedly was injured when that vehicle came into contact with a vehicle owned by the defendant Aron Puretz and operated by the defendant Nathan T. Cohen. The plaintiff subsequently commenced the instant action alleging, inter alia, that the vehicles were negligently operated.

In moving for summary judgment on the issue of liability, the plaintiff failed to submit any evidence concerning the circumstances surrounding the accident and, therefore, failed to establish

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that either of the vehicles were negligently operated. Under these circumstances, the plaintiff failed to demonstrate his prima facie entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *cf. Howell v RS Cab Corp.*, 63 AD3d 1002). Accordingly, the Supreme Court properly denied his motion, with leave to renew after the depositions of the parties, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Howell v RS Cab Corp.*, 63 AD3d at 1003).

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court