

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

D32090  
H/ct

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Submitted - June 21, 2011

WILLIAM F. MASTRO, J.P.  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN  
JEFFREY A. COHEN, JJ.

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2010-10788

DECISION & ORDER

Judith Vazquez, plaintiff-respondent, v Esteban Perez Roldan, defendant-respondent, Miguel A. Jimenez, appellant.

(Index No. 12169/07)

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James G. Bilello, Westbury, N.Y. (Patricia McDonagh of counsel), for appellant.

Neimark & Neimark LLP, New City, N.Y (Ira H. Lapp and Vincent A. Maviglia of counsel), for plaintiff-respondent.

In an action to recover damages for personal injuries, the defendant Miguel A. Jimenez appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated October 19, 2010, which denied his motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

ORDERED that the order is reversed, on the law, with costs, the motion of the defendant Miguel A. Jimenez for summary judgment dismissing the complaint and all cross claims insofar as asserted against him is granted, and the action against the remaining defendant is severed.

The plaintiff allegedly sustained personal injuries when the motor vehicle owned and operated by the defendant Miguel A. Jimenez, in which she was a passenger, was struck by a vehicle owned and operated by the defendant Esteban Perez Roldan. Following joinder of issue and the completion of discovery, Jimenez moved for summary judgment dismissing the complaint and all cross claims insofar as asserted against him. The Supreme Court denied the motion. We reverse.

July 26, 2011

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Jimenez established his prima facie entitlement to judgment as a matter of law by submitting admissible evidence demonstrating that his double-parked vehicle was not a proximate cause of the accident (*see* CPLR 3212; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Darmento v Pacific Molasses Co.*, 81 NY2d 985, 988; *Gerrity v Muthana*, 7 NY3d 834; *Dauber v Stone*, 76 AD3d 699; *Williams v City of New York*, 240 AD2d 734).

In opposition, no triable issue of fact was raised. Even assuming that Jimenez's vehicle was double-parked in violation of applicable regulations, no triable issue of fact was raised as to whether the location of the double-parked vehicle was a proximate cause of the accident (*see Sheehan v City of New York*, 40 NY2d 496, 503; *Dauber v Stone*, 76 AD3d 699; *Wechter v Kelner*, 40 AD3d 747; *Fermaglich v Arnone*, 36 AD3d 584; *Dormena v Wallace*, 282 AD2d 425).

Accordingly, the Supreme Court erred in denying Jimenez's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

MASTRO, J.P., CHAMBERS, AUSTIN and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court