

Garcia v Shuminov

2026 NY Slip Op 31084(U)

March 19, 2026

Supreme Court, Kings County

Docket Number: Index No. 515948/2024

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 19th day of March 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

LEONARDO ADOLFO GARCIA and PEDRO ZORILLA,

Plaintiff(s),

-against-

OKTAY SHUMINOV, EDGARD W. HERRERA, and VENTURE LEASING LLC,

Defendant(s).

DECISION & ORDER

Index No.: 515948/2024

Calendar No.: 1

Motion Seq.: 001

Return Date: 11/13/2025

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers Numbered**

Notice of Motion and Supporting Documents	21-29
Affirmation in Opposition and Supporting Documents.....	30-31, 33-37, 46-47, 49-52
Reply Affirmation and Supporting Documents	32 and 45
Notice of Rejection	54-56

Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for personal injuries arising out of a motor vehicle accident. At the time of the accident, plaintiffs were passengers in defendants Edgard W. Herrera, and Venture Leasing LLC’s vehicle when it was struck from behind on the Belt Parkway, by defendant Oktay Shuminov. Therefore, plaintiffs have moved for summary judgment per CPLR 3212 on the issue of liability against all defendants. As to Oktay Shuminov, plaintiffs argue that he violated VTL § 1129 (a), because a rear-end collision establishes negligence as a matter of law. Plaintiffs also

move to dismiss all defendants' affirmative defenses of culpable conduct, contributory negligence, comparative negligence and assumption of risk.

Plaintiffs each submit an affirmation/affidavit in support of their motion. Defendant Oktay Shuminov initially submitted opposition papers on 8/13/2025. Plaintiffs submitted a reply on 8/20/2025 pointing out that Oktay Shuminov did not submit his own affirmation/affidavit. Then, Oktay Shuminov's attorneys served an amended affirmation in opposition, together with an affirmation/affidavit from Mr. Shuminov stating that the host vehicle operated by co-defendants cut in front of him. On 10/21/2025, plaintiffs served a notice of rejection of Oktay Shuminov's amended papers stating that same constituted a sur-reply. The motion is denied.

"A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Ramos v. TC Paratransit*, 96 AD3d 924, 925 [2d Dept. 2012] [internal citations omitted]).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to

establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

Plaintiffs failed to establish a *prima facie* entitlement to summary judgment against all defendants (*Ayotte v Gervasio*, 81 NY2d 1063, citing *Alvarez v Prospect Hospital*, 68 NY2d 324). Plaintiffs attest that the accident occurred due to the negligence of *all* defendants not just that of Oktay Shuminov. Therefore, inherent in this argument, is that the host vehicle shares responsibility for this purported hit in the rear demonstrating a triable issue of fact as to a nonnegligent explanation for the collision by Shuminov (*Quinones v. Grace Indus., LLC*, 219 A.D.3d 766 [Summary judgment denied when the injured plaintiff's vehicle came to a sudden and unexpectedly stop short on the parkway when another vehicle unexpectedly changed lanes.] and *Yearwood v New York City Transit Authority*, 227 AD3d 843 [2d Dept 2024] [Summary judgment denied when the host vehicle came to a sudden stop when it was “cut off” by another vehicle.]). Accordingly, the Court need not address the sufficiency of the opposition papers (*Ayotte v Gervasio*, 81 NY2d 1063, citing *Alvarez v Prospect Hospital*, 68 NY2d 324).

However, the Court grants plaintiffs’ motion as to the dismissal of affirmative defenses. The Court has considered the parties’ remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion for summary judgment per CPLR 3212 on the issue of liability against all defendants is DENIED, and it is further

ORDERED that plaintiffs’ motion for summary judgment per CPLR 3212 dismissing all defendants’ affirmative defenses of culpable conduct, contributory negligence, comparative negligence and assumption of risk is GRANTED.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', written over a faint grid background.

Hon. Anne J. Swern, J.S.C.

Dated: 3/19/2026