

Davurov v Feldman Lumber - USLMB, LLC
2026 NY Slip Op 31089(U)
March 18, 2026
Supreme Court, Kings County
Docket Number: Index No. 520692/2024
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of March, 2026.

P R E S E N T :
HON. WAVNY TOUSSAINT,
Justice.

JAVLON DAVUROV,

Plaintiff,

-against-

FELDMAN LUMBER – USLMB, LLC and
TERRANCE KING,

Defendants.

Index No.: 520692/2024

**DECISION AND
ORDER**

The following papers numbered 1 to read herein
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

NYSCEF Doc. Nos.

14-20
24-28
30-31

Plaintiff moves (Seq.01) for an order, pursuant to CPLR § 3212, granting summary judgment against defendants on the issue of liability and striking defendants’ affirmative defenses. Defendants oppose the motion.

Background

On October 30, 2023, at approximately 1:50 p.m., plaintiff was operating his vehicle at or near the intersection of Grand Street and Catherine Street in Brooklyn, New York.

Plaintiff alleges a flatbed truck (the “truck”) owned by defendant Feldman Lumber – USLMB, LLC (Feldman Lumber), and operated by defendant Terrance King (King), crossed over the double yellow line separating the two directions of travel and struck his vehicle. Plaintiff alleges he sustained severe physical injuries as a result of the accident.

This action for personal injuries was commenced by summons and complaint filed on August 1, 2024. Issue was joined when defendants filed their answer on December 24, 2024.

The Parties’ Contentions

Plaintiff argues it is without dispute the truck operated by King crossed the double yellow line, striking his vehicle. Plaintiff points to New York State Vehicle and Traffic Law § 1128 [a] (the “VTL”), entitled “Driving on Roadways Laned for Traffic”, and argues liability must be apportioned to defendants upon King’s failure to operate the truck within his lane of travel. Plaintiff further argues he is free from negligence while defendants cannot offer a legally cognizable, non-negligent explanation for the happening of the accident, warranting dismissal of defendants’ affirmative defenses.

Defendants contend there are triable issues of fact preventing summary judgment and point to the dash cam video (video) from the truck, purportedly depicting the accident as it occurred. As indicated by the video, defendants contend King was attempting to maneuver to the left side of another stopped, double parked truck in front of him. Defendants concede the maneuver placed King’s truck within plaintiff’s lane of travel, but contend plaintiff failed to yield to King’s on-coming truck, though there was more than ample distance and sufficient time to do so. Inexplicably, defendants contend, plaintiff

continued driving forward striking the truck. Finally, defendants contend plaintiff's motion is premature as party depositions, which remain outstanding, would lead to facts to support defendants' theory of the happening of the accident, warranting denial of the motion.

Plaintiff argues, in reply, that King had the statutory obligation not to enter plaintiff's established lane of travel. Plaintiff further argues the video actually shows King was distracted by a motorbike passing to his right and that in any event, the video confirms King crossed over the double yellow line into his lane of travel. Plaintiff also argues that depositions of the parties are not needed to decide the motion, as defendant also had access to other sources of information to support any opposition to the motion, including an affidavit from King, which defendants failed to provide.

Discussion

Standard of Review

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Derise v Jaak 773, Inc.*, 127 AD3d 1011, 1011 [2d Dept 2021]). Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

When moving for summary judgment on liability, it is plaintiff's burden to establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's

negligence was a proximate cause of the alleged injuries (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2d Dept 2018]). A plaintiff is no longer required to prove the absence of his or her comparative fault, to be entitled to partial summary judgment (*Id.* at 1034, *citing Rodriguez v City of New York*, 31 NY3d 312, 324-325 [2018]).

The Governing Statutes

VTL § 1128 [a] states as follows:

"A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

"As a general matter, the operator of a motor vehicle has a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Balducci v Velasquez*, 92 AD3d 626, 628 [2d Dept 2012], *citing Filippazzo v Santiago*, 277 AD2d 419, 420 [2d Dept 2000] and *Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999]).

VTL § 1126 [a] states, in part, as follows:

"When official markings are in place indicating those portions of any highway where overtaking and passing or driving to the left of such markings would be especially hazardous, no driver of a vehicle proceeding along such highway shall at any time drive on the left side of such markings."

"Crossing a double yellow line into the opposing lane of traffic, in violation of Vehicle and Traffic Law § 1126(a), constitutes negligence as a matter of law, unless justified by an emergency situation not of the driver's own making" (*Burgess v Little Wolf Cabinet Shop, Inc.*, 226 AD3d 957, 958 [2d Dept 2024]; *Shah v MTA Bus Co.*, 201 AD3d 833, 834 [2d Dept 2022]).

Finally, VTL § 1120 [a] [3] states, in part, as follows:

“Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows: 3. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard.”

As relevant here, an unexcused violation of VTL § 1120 [a] [3] also constitutes negligence as a matter of law (*Hodnett v Westchester County Dept. of Pub. Works & Transp.*, 181 AD3d 655, 658 [2d Dept 2020]).

Motion Seq. 01

Plaintiff now moves (Seq. 01) for summary judgment as to liability arguing there is no non-negligent explanation for the truck operated by King coming into contact with his vehicle. In support of the motion, plaintiff submitted an affidavit (NYSCEF Doc. No. 20) and the certified Police Accident Report, dated October 30, 2023 (the “accident report”; NYSCEF Doc. No. 19), generated as a result of the accident. When describing the accident, plaintiff states, in part:

“Grand Street is a two-way street and there is a double yellow line separating the travel lanes for each direction of travel. On the day of the accident, the vehicle that I was operating in was a 2010 Toyota . . . This vehicle, to the best of my knowledge, was in fine mechanical order, and all lights, brake lights, taillights and turn signals were in working order. On October 30, 2023, at approximately 1:50 p.m., the vehicle which I was operating was struck by the motor vehicle . . . operated by [defendant King] . . . I was traveling straight in my lane at the above-mentioned location. The defendants' vehicle crossed over the double yellow line separating the two directions of travel without first ascertaining that it was safe to do so and struck my vehicle. At no time prior to the collision did [defendant King] ever honk the horn of his vehicle or otherwise warn me that an impact was

imminent. On the day of the accident, the weather was good, and the road was dry.”¹

The accident report additionally depicts King’s truck as situated nearly fully within plaintiff’s lane, supporting plaintiff’s claim that King crossed the double yellow line into his path of travel.

The proof, when taken together, establish plaintiff’s *prima facie* entitlement to judgement as a matter of law on the issue of liability. Plaintiff demonstrated King crossed the double yellow line, entered the opposite lane of traffic, and struck the plaintiff’s vehicle, in violation of VTL §§ 1128 [a], 1126 [a] and 1120 [a] [3], which was the proximate cause of the accident (*Shah*, 201 AD3d at 834). Having made a *prima facie* showing, the burden shifted to defendants to present admissible proof to raise a triable issue of fact in opposition (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In opposition, defendants rely primarily on the video depicting the accident as it occurred and the affidavit of Feldman Lumber’s Senior Liability Claims Specialist, submitted to authenticate the video (NYSCEF Doc. No. 26). As a preliminary matter, the video was properly authenticated by the affidavit of the Claims Specialist, who testified as to the procedures utilized to download the video from the dashboard camera video system known as “Smart Drive”. From this testimony, it appears to the Court that the video was not altered in any manner and accurately depicts what is shown in the video. Accordingly, the Court considered the authenticated video when assessing defendants’ burden (*Alston v*

¹ See NYSCEF Doc. No. 20 at pars. 5-9. Plaintiff also refers in his affidavit to photographs he took of the accident scene purportedly attached at Exhibit “E” to the supporting affirmation of counsel (*Id.* at par. 10), but it appears no such exhibits were uploaded.

Irizarry, 195 AD3d 578, 578-579 [2d Dept 2021]; *see also Quinones v 2074 White Plains Rd. Bldg., LLC*, 180 AD3d 721, 722 [2d Dept 2020], *citing Zegarelli v Hughes*, 3 NY3d 64, 69 [2004]). The Court also notes that in reply, plaintiff did not challenge the authenticity of the video.

Having considered defendants' proof, the Court finds material questions of fact are raised regarding the happening of the accident. Here, the video raises questions of fact as to whether plaintiff failed to observe that the truck had crossed the double yellow line and, if having so observed same, whether plaintiff failed to take appropriate action to avoid the accident. Plaintiff also failed to rebut defendants' proof in reply.

Conclusion

Accordingly, it is hereby

ORDERED, that plaintiff's motion (Seq.01) for an order, pursuant to CPLR § 3212, granting summary judgment against defendants on the issue of liability and striking defendants' affirmative defenses, is denied in every respect.

The Court has reviewed all other contentions of the parties and finds them unavailing. All relief not expressly granted herein is denied.

This constitutes the decision and order of the Court.

For Clerks use only

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Motion Seq.# |

KINGS COUNTY CLERK
FILED
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J.S.C.

**HON. WAVNY TOUSSANT
J. S. C.**