

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

D80162
C/

_____AD3d_____

Submitted - October 7, 2025

HECTOR D. LASALLE, P.J.
FRANCESCA E. CONNOLLY
LOURDES M. VENTURA
ELENA GOLDBERG VELAZQUEZ, JJ.

2024-12886

DECISION & ORDER

Glenda Ortega Diaz, et al., respondents,
v Jhedrian Logistics Corp., et al., defendants,
Jose Arce, appellant.

(Index No. 701372/23)

Jennifer S. Adams, Williamsville, NY (Richard C. Ertel of counsel), for appellant.

In an action to recover damages for personal injuries, the defendant Jose Arce appeals from an order of the Supreme Court, Queens County (Laurentina S. McKetney Butler, J.), dated September 16, 2024. The order denied that defendant’s motion for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Jose Arce for summary judgment dismissing the complaint insofar as asserted against him is granted.

The plaintiffs commenced this action to recover damages for personal injuries that they allegedly sustained in a motor vehicle accident. At the time of the accident, the plaintiffs were passengers in a vehicle operated by the defendant Jose Arce (hereinafter the defendant) that allegedly was struck in the rear by a vehicle owned by the defendant Jhedrian Logistics Corp. (hereinafter Jhedrian). Thereafter, the defendant moved for summary judgment dismissing the complaint insofar as asserted against him. In an order dated September 16, 2024, the Supreme Court denied the defendant’s motion. The defendant appeals.

“A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident” (*Boulos v Lerner-Harrington*, 124 AD3d 709, 709).

April 8, 2026

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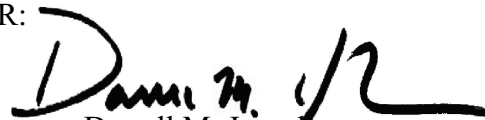
DIAZ v JHEDRIAN LOGISTICS CORP.

Here, the defendant established his prima facie entitlement to judgment as a matter of law dismissing the complaint insofar as asserted against him. In support of his motion, the defendant submitted an affidavit demonstrating that he was not at fault in the happening of the accident (*see Witonsky v New York City Tr. Auth.*, 145 AD3d 938, 939; *Service v McCoy*, 131 AD3d 1038, 1039). In opposition, the plaintiffs failed to raise a triable issue of fact. The plaintiffs did not submit an affidavit or other evidentiary material to rebut the defendant's prima facie showing, and they failed to demonstrate that the motion was premature (*see CPLR 3212[f]*; *Forte v City of New York*, 237 AD3d 1164, 1165; *Fieldman v Bambi Assoc., Inc.*, 231 AD3d 790, 791).

Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint insofar as asserted against him.

LASALLE, P.J., CONNOLLY, VENTURA and GOLDBERG VELAZQUEZ, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", with a stylized flourish at the end.

Darrell M. Joseph
Clerk of the Court