

**Spadaro v Parking Sys. Plus, Inc.**

2011 NY Slip Op 31572(U)

June 1, 2011

Sup Ct, Nassau County

Docket Number: 11114/09

Judge: Anthony L. Parga

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SHORT FORM ORDER  
NEW YORK STATE-SUPREME COURT-NASSAU COUNTY

PRESENT:

HON. ANTHONY L. PARGA  
JUSTICE

-----X PART 8  
LOUISE SPADARO, as Executrix of the Estate of  
JEFFERY L. SIEGEL,

Plaintiff,

INDEX NO. 11114/09

-against-

MOTION DATE: 4/4/11  
SEQUENCE NO.  
02,03,04,05

PARKING SYSTEMS PLUS, INC., ISLAND VALET  
SERVICE INC., S&K RESTURANT CORP., MATTEO'S  
OF BELLMORE INC., MATTEO'S OF HOWARD BEACH  
INC., MATTEO'S LONG BEACH INC., MATTEO'S  
RESTAURANT MANAGEMENT GROUP, LLC, MATTEO'S,  
INC., MAYER SADIAN and DALIA DAVOUDI,

Defendants.

-----X

Notice of Motion(Seq.02).....	<u>1</u>
Memorandum of Law.....	<u>2</u>
Notice of Cross-Motion(Seq.03).....	<u>3</u>
Notice of Motion(Seq.04).....	<u>4</u>
Notice of Cross-Motion(Seq.05).....	<u>5</u>
Affirmation in Opposition, Reply & Sur-Reply.....	<u>6</u>
Affirmation in Opposition.....	<u>7</u>
Reply to Affirmation in Opposition of Defendants Sadian and Davoudi.....	<u>8</u>
Reply Affirmation (to Parking Systems & Island's Partial Opposition).....	<u>9</u>
Reply to Plaintiff's Affirmation in Opposition to S&K.....	<u>10</u>
Affirmation in Reply to Opp of Defendants Parking Systems.....	<u>11</u>
Affirmation in Reply to Defendant S&K Opp.....	<u>12</u>
Affirmation in Reply to Opp. of Defendants Parking Systems.....	<u>13</u>

Defendant S&K Restaurant Corp. d/b/a Matteo's Restaurant of Roslyn's motion for summary judgment and defendants Parking Systems Plus, Inc. and Island Valet Service, Inc.'s cross-motion for summary judgment are granted. Plaintiff's cross-motion to strike the

defendants' answers is denied as moot, and plaintiff's motion for leave to take the deposition of incarcerated defendant Mayer Sadian at Wyoming Correctional Facility in Attica, New York, is granted as directed below.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this court.

This action stems from a motor vehicle accident which occurred on July 6, 2007 at approximately 8:13 p.m. on Mineola Avenue, at or near the intersection of Willow Street in Roslyn Heights, New York. The accident occurred when a vehicle owned by defendant Dalia Davoudi and operated by defendant Mayer Sadian struck the decedent, Jeffrey L. Siegel, as he walked across Mineola Avenue. Decedent Jeffrey L. Siegel was pronounced dead at the scene of the accident. Plaintiff Louise Spadaro, as Executrix of the Estate of Jeffrey L. Siegel, has brought the within action alleging wrongful death and conscious pain and suffering.

Plaintiff alleges negligence on the part of all defendants, and specifically alleges that defendants S&K Restaurant Corp. d/b/a Matteo's Restaurant of Roslyn (hereinafter "S&K") and Parking Systems Plus, Inc. and Island Valet Service, Inc. (hereinafter collectively referred to as "Parking Systems") were negligent in the manner in which either or both performed valet parking services for Matteo's Restaurant on Mineola Avenue on the night of the accident. It is alleged that S&K and Parking Systems allowed vehicles to be double-parked in a moving northbound lane of traffic on Mineola Avenue for the purpose of providing valet services for patrons of Matteo's Restaurant, thereby negligently obstructing the view of the decedent and of vehicles traveling north on Mineola Avenue and creating a dangerous and hazardous condition on Mineola Avenue.

It is uncontested that the accident occurred as Jeffrey L. Siegel was crossing Mineola Avenue from west to east, near the intersection of Willow Street, when he was struck by the Sadian vehicle as said vehicle traveled north on Mineola Avenue. Defendant Mayer Sadian was tried and convicted of criminally negligent homicide and leaving the scene of an accident without reporting and was sentenced to three to nine years. He is presently serving time in Wyoming Correctional Facility in Attica, New York.

Defendant S&K has moved for summary judgment upon the grounds that (1) it cannot be

held liable for any negligence in the valet parking of vehicles at Matteo's Restaurant, as none of its employees performed parking services and it did not supervise or direct the manner in which its independent contractor, Parking Systems, performed valet parking services, and (2) that any double parking of vehicles by Parking System employees played no part in the happening of the accident and was not a proximate cause thereof. Defendant Parking Systems cross-moves for summary judgment on the identical ground that any double parking of vehicles played no part in the happening of the accident and was not a proximate cause of the accident. Defendant Parking Systems adopts the arguments made by S&K in support of said grounds, but partially opposes S&K's summary judgment motion upon the grounds that S&K did, in fact, supervise the valet parking services.

Defendant S&K submits a certified copy of the police accident report which indicates that Jeffrey L. Siegel was crossing Mineola Avenue from west to east and was struck by a northbound vehicle, driven by defendant Mayer Sadian. Defendant S&K argues that a double parked vehicle in front of Matteo's would not affect the decedent's view of traffic approaching from either direction and would not affect the view of a motorist proceeding toward him from his right, traveling in a northbound direction. As such, defendant S&K argues that the presence of any double parked cars in front of Matteo's was not a proximate cause of the accident.

Plaintiff Louise Spadaro was the wife of Jeffrey L. Spiegel. Louise Spadaro testified at a deposition that her husband's accident occurred as he crossed Mineola Avenue from the west side to the east side on his way to pick up a pizza order from a restaurant called Attilio's, located on the southeast corner of Mineola Avenue and Elm Street. She testified that her husband's vehicle was parked in front of the funeral home, located on the west side of Mineola Avenue near the intersection of Willow Street. She also testified that the decedent's body came to rest on the east side of the Mineola Avenue, north of the intersection of Willow Street, in front of the post office. She further testified that traveling north from Attilio's on Mineola Avenue (at Elm Street), you would pass a Chicken Kebab store, then Matteo's restaurant, then a photography store, then an Allstate storefront, then a deli, a shoe store, and a dry cleaner, all on the east side of Mineola Avenue. Louise Spadaro testified that the intersecting street of Willow Street was past the dry cleaners, heading north, and that the post office is on the northeast corner of Mineola

[\* 4]  
Avenue and Willow Street.

An eyewitness to the accident, Chris Tsarsi, the manager of Matteo's Restaurant, testified at the criminal trial of defendant driver Mayer Sadian. Mr. Tsarsi was working on the date of the accident and testified that a woman came into the restaurant and advised him that it was about to rain and that many of the convertibles outside had their tops down. Mr. Tsarsi went outside and "direct[ed] the valets to...close the cars up." Mr. Tsarsi saw the accident occur while standing in front of the deli, two storefronts north of Matteo's. Mr. Tsarsi testified at the criminal trial that it was raining at the time of the accident and that he saw a man with an umbrella crossing over Mineola Avenue from the funeral home on the west side of the street toward the dry cleaners on the east side of the street, just south of the intersection of Willow Street. He testified that he saw a gold-colored car traveling north on Mineola Avenue at about 60-80 mph. He saw the gold vehicle change from the left northbound lane to the right northbound lane of Mineola Avenue, when the vehicle was in front of the dry cleaners, and strike the decedent. Mr. Tsarsi testified that he saw the decedent's body fly up into the air and hit into the back of a BMW parked in front of the post office near the northeast corner of Mineola Avenue and Willow Street. He testified that six to eight cars may have been lined up in front of Matteo's restaurant at the time of the accident and that some may have been in the northbound travel lane. He also testified that he first saw the vehicle involved in the accident when it was "just north" of Matteo's and saw it travel approximately 20 to 30 yards before it made contact with the decedent.

Plaintiff and defendants Sadian and Davoudi oppose defendants S&K's motion and Parking System's cross-motion arguing, *inter alia*, that the defendants have not made a prima facie showing of entitlement to summary judgment and that the deposition of incarcerated defendant Mayer Sadian is needed to determine if his view was obstructed by double parked cars in front of Matteo's restaurant. Plaintiff also argues that it had not been possible to schedule defendant Sadian's deposition previously, as Sadian had a criminal appeal pending and his criminal lawyer advised that if deposed, he would invoke his Fifth Amendment privilege when questioned about the happening of the accident. Plaintiff advises that Mr. Sadian's appeal has been recently denied and moves for an order directing his appearance for a deposition to be held at the Wyoming Correctional Facility in Attica, New York. Plaintiff argues that the moving

defendants' motion and cross-motion is premature and that defendant Sadian's deposition is needed to oppose the within motions. The Court notes that defendant Mayer Sadian has not submitted an affidavit in his opposition to the moving defendants' motion and cross-motion.

In order to recover against a particular defendant, the plaintiff must demonstrate that defendant's conduct was a substantial causative factor in the sequence of events that led to injury. (*Sheehan v. City of New York*, 40 N.Y.2d 496, 387 N.Y.S.2d 92 (1976)). Evidence of negligence is not enough by itself to establish liability, it must also be proved that the negligence was the cause of the event which produced the harm sustained by one who brings the complaint. (*Id.* at 501). A defendant is entitled to summary judgment when it is established that the alleged negligence was not a proximate cause of the plaintiff's injuries. (*See, Gerrity v. Muthana*, 7 N.Y.3d 834, 824 N.Y.S.2d 206 (2006); *Fermaglich v. Arnone*, 36 A.D.3d 584, 828 N.Y.S.2d 171 (2d Dept. 2007)).

In the instant matter, the vehicle that struck the decedent was coming from the decedent's right. The decedent, who was crossing Mineola Avenue from the opposite side of the street from Matteo's, was to the vehicle's left. Matteo's, and any allegedly double parked cars, would have been to the driver's right side. Additionally, the point of impact was five storefronts north of Matteo's restaurant, which, according to Mr. Tsarsi's testimony, was twenty to thirty yards north of Matteo's. It is uncontested that the accident occurred in front of the dry cleaners, near the intersection of Willow Street, twenty to thirty yards past Matteo's restaurant. Accordingly, there is no evidence to support plaintiff's allegations that double parked vehicles in front of Matteo's caused an obstruction to the motorist or to the decedent. There is no evidence before this Court that the existence of double parked cars in front of Matteo's was a proximate cause of the accident. (*See, Remy v. City of New York*, 36 A.D.3d 602, 828 N.Y.S.2d 451 (2d Dept. 2007)(actions of city workers in stopping their truck in the right lane of an expressway to remove graffiti, allegedly obstructing a motorist's view, were not a proximate cause of a motor vehicle accident, but rather, merely furnished the condition for the occurrence of the accident); *Wechter v. Kelner*, 40 A.D.3d 747, 853 N.Y.S.2d 653 (2d Dept. 2007)(defendant's conduct in stopping his car while waiting for a parking space merely furnished the condition or occasion for the accident and was not a proximate cause of the plaintiff's injuries); *Dauber v. Stone*, 76 A.D.3d 699, 907

N.Y.S.2d 291 (2d Dept. 2010)(even assuming that the delivery truck was double parked, defendants were entitled to summary judgment where they demonstrated that the location of the double parked vehicle was not a proximate cause of the accident); *Gerrity v. Muthana*, 7 N.Y.3d 834, 824 N.Y.S.2d 206 (2006)(location of bus in the traffic lane at the time of the accident resulted from negligence, but was not a proximate cause of plaintiff's injuries).

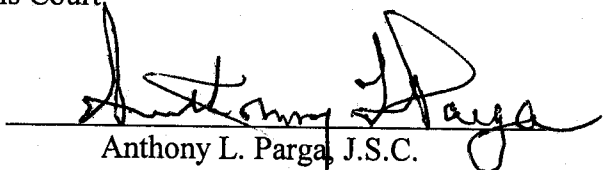
Liability may not be imposed upon a party who merely furnished the condition or occasion for the occurrence of the event, but was not one of its causes. (*Sheehan v. City of New York*, 40 N.Y.2d 496, 387 N.Y.S.2d 92 (1976); *Wechter v. Kelner*, 40 A.D.3d 747, 835 N.Y.S.2d 653 (2d Dept. 2007)). Even if cars were double parked in front of Matteo's, their presence was not a proximate cause of this unfortunate accident. Further, defendant Sadian was convicted of criminally negligent homicide, and Mr. Tsasri's testimony is that defendant Sadian was traveling at sixty to eighty miles per hour, in a torrential rain storm at around 8:13 in the evening, when his vehicle struck the decedent. The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered" by further discovery is an insufficient basis for denying the motion. (*Woodard v. Thomas*, 2010 WL 4008451 (2d Dept. 2010); *Lopez v. WS Distribution, Inc.*, 34 A.D.3d 759, 825 N.Y.S.2d 516 (2d Dept. 2006); *Conte v. Frelen Assoc.*, 51 A.D.3d 620, 858 N.Y.S.2d 258 (2d Dept. 2008)).

Accordingly, S&K's motion and Parking Systems' cross-motion for summary judgment are granted, and plaintiff's complaint, together with all cross-claims, is dismissed as against S&K Restaurant Corp. d/b/a Matteo's Restaurant of Roslyn's, Parking Systems Plus, Inc. and Island Valet Service, Inc. As such, plaintiff's motion to strike the answers of defendants S&K and Parking Systems for failure to provide discovery is denied as moot.

Lastly, plaintiff's motion for leave to take the deposition of incarcerated defendant, Mayer Sadian, pursuant to CPLR §3106(c), is granted. Plaintiff submits that defendant Mayer Sadian (Department Identification Number 09A0497) is currently confined in the Wyoming Correctional Facility, located at 3203 Dunbar Road, P.O. Box 501, Attica New York 14011-0501. It is hereby ordered that the deposition testimony of Mayer Sadian be taken upon oral questions at the Wyoming Correctional Facility in Attica, New York, in accordance with the rules and schedule of said correctional facility, on or before September 21, 2011. It is further

ordered that the Warden of the Wyoming Correctional Facility shall produce Mayer Sadian (DIN 09A0497) for the purpose of the taking of his deposition at the Wyoming Correctional Facility, upon notice of same by the plaintiff, in accordance with the rules and schedule of Wyoming Correctional Facility.

This constitutes the decision and Order of this Court  
Dated: June 1, 2011

  
Anthony L. Parga, J.S.C.

**ENTERED**  
JUN 03 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE

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