

<b>Schultze v Beauport</b>
2021 NY Slip Op 33143(U)
November 16, 2021
Supreme Court, Queens County
Docket Number: Index No. 716624/19
Judge: Timothy J. Dufficy
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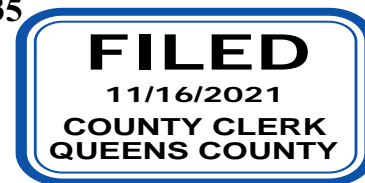
**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**

**PART 35**

**Justice**



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**GIOVANNI NARDI SCHULTZE AND  
FEDERICA BIANCONI,**

**Plaintiffs,**

**Index No.: 716624/19**

**-against-**

**Mot. Date: 9/28/21**

**Mot. Seq. 4**

**AXELLE BEAUPORT, YAN LI, CONSULATE  
GENERAL OF THE PEOPLE'S REPUBLIC OF  
CHINA IN NEW YORK, PHILIPPE TATING,  
BARRY LIMO INC.,**

**Defendants.**

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The following papers were read on this motion by plaintiffs for an order, pursuant to CPLR 3212, granting partial summary judgment on liability in their favor and against defendant Axelle Beauport; dismissing the affirmative defenses of defendant Axelle Beauport; and costs and attorneys fees related to the making of the instant motion.

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits .....	EF 76-88
Answering Affidavits.....	EF 89-91

Upon the foregoing papers, it is ordered that the motion by plaintiffs is granted in part and denied in part.

In this action, plaintiffs Giovanni Nardi Schultze and Federica Bianconi seek damages for personal injuries sustained in a three-car motor vehicle accident, that occurred on July 11, 2019, on the westbound Long Island Expressway, in Queens, New York, while they were passengers in a taxicab operated by defendant Axelle Beauport (Beauport vehicle).

Plaintiffs now move for an order, pursuant to CPLR 3212, granting partial summary judgment on liability in their favor and against defendant Axelle Beauport.

Defendants Yan Li, Consulate General of the People's Republic of China in New York, Philippe Tating and Barry Limo Inc. previously moved for summary judgment, pursuant to CPLR 3212. This Court in its Order, dated December 4, 2020, granted same. The Court found that the evidence proffered in the record revealed that at the time of the accident, the plaintiffs were passengers in the taxicab operated by defendant Axelle Beauport, and the Beauport vehicle first struck the rear of the vehicle operated by defendant Yan Li and owned by defendant Consulate General of the People's Republic of China In New York, and then subsequently struck the rear of the vehicle operated by defendant Philippe Tating and owned by defendant Barry Limo Inc. The Court additionally found that defendants Yan Li, Consulate General of the People's Republic of China in New York, Philippe Tating and Barry Limo Inc. established a *prima facie* case on the issue of liability by submitting affidavits that: their respective vehicle were each struck in the rear by the defendant Beauport's taxicab; they in no way contributed to the happening of the accident; and defendant Axelle Beauport failed to establish a triable issue of fact in opposition, despite the submission of an affidavit wherein he alleged brake failure. Thus, the action was dismissed against Defendants Yan Li, Consulate General of the People's Republic of China in New York, Philippe Tating and Barry Limo Inc.

Pursuant to the Court Order, dated December 4, 2020, this Court determined that defendant Axelle Beauport, is liable for the subject "rear end" accident. Said determination is now "law of the case." As such, the plaintiffs established a *prima facie* case in support of the motion for summary judgment, pursuant to CPLR 3212.

In the instant opposition papers, defendant Beauport states that he "is not seeking and has never sought to revisit the Courts prior substantive ruling on liability and is mindful of the res judicata effect of said ruling." However, defendant Beauport requests that the branch of plaintiffs' motion seeking to dismiss all affirmative defenses be denied and that the affirmative defenses related to damages (2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> affirmative

defenses) not be stricken. Such request is granted.

As there is no evidence in the record that the plaintiffs/passengers caused or contributed to the accident in any way, the affirmative defense of comparative negligence shall be dismissed. However, the affirmative defenses regarding damages (i.e., second, third, fourth, and fifth affirmative defenses) shall remain.

Thus, the branch of the motion seeking to dismiss all affirmative defenses is granted only to the extent that the affirmative defense of comparative negligence shall be dismissed. The affirmative defenses regarding damages (i.e., second, third, fourth, and fifth affirmative defenses) shall remain.

In light of the above, the plaintiffs are entitled to summary judgment, pursuant to CPLR 3212, on the issue of liability as against defendant Axelle Beauport.

Additionally, pursuant to this Court's Order, dated July 13, 2021, defendant Axelle Beauport shall pay the plaintiffs the costs of making the instant motion.

Accordingly, it is

**ORDERED** that plaintiffs' motion is granted in part and denied in part, in that:  
it is

**ORDERED** that the branch of plaintiffs' motion seeking summary judgment, pursuant to CPLR 3212, as against defendant Axelle Beauport is granted ; and it is further

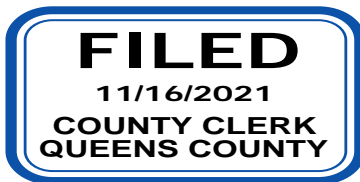
**ORDERED** that the branch of the motion seeking to dismiss all affirmative defenses is granted ONLY to the extent that defendant Beauport's affirmative defense of comparative negligence shall be dismissed; and it further

**ORDERED** that defendant Beauport's affirmative defenses regarding damages (i.e., second, third, fourth, and fifth affirmative defenses) shall remain; and it is further

**ORDERED** that the branch of plaintiffs' motion seeking costs and attorneys fees related to the making of the instant motion is granted only to the extent that defendant Axelle Beauport shall pay the plaintiffs the costs of making the instant motion.

The foregoing constitutes the decision and order of the Court.

**Dated: November 16, 2021**



A handwritten signature in black ink, appearing to read "Timothy J. Dufficy".

**TIMOTHY J. DUFFICY, J.S.C.**