

Shokirov v Zero Below Trucking, Corp.

2025 NY Slip Op 33237(U)

August 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 520691/2024

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

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 28th day of August 2025.

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

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DONIYOR SHOKIROV and FOZILZHON MIRZOEV,

Plaintiffs,

-against-

ZERO BELOW TRUCKING, CORP. and ELDO V. GOMEZ,

Defendants.

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Calendar No.: 52

Motion Seq.: 002

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

	Papers Numbered
MS002 Notice of Motion, Affirmation and Supporting Documents (NYSCEF 34-36).....	1, 2
Affirmation In Opposition and Supporting Documents (NYSCEF 42-46)	3
Reply Affirmation (NYSCEF 51)	4
MS003 Notice of Cross-Motion and Supporting Documents (NYSCEF 42-46).....	5, 6
Affirmation in Opposition (NYSCEF 52).....	7

Upon the foregoing papers and after oral argument, plaintiff's motion for summary judgment is decided as follows:

Defendants have moved this Court for an order pursuant to CPLR § 2221 [d] granting leave to reargue the decision and order dated 2/27/2025 and, upon reargument, denying summary judgment on liability in favor of plaintiff Mirzoev (MS 002). Plaintiffs have also moved for an order pursuant to CPLR § 2221 [d] for leave to (1) reargue the decision and order dated 2/27/2025 and, upon reargument, granting summary judgment on liability [as to plaintiff

Shokiro] and directing that the parties proceed to trial on the issue of damages only as to both plaintiffs, and, (2) renew the motion based on video dash camera footage exchanged by defendant after 4/25/25 (MS 003). The decision and order of 2/27/2025 reads in pertinent part as follows:

When deciding a summary judgment motion, the Court's role is solely to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court views the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept 2002]). A violation of the Vehicle and Traffic Law constitutes negligence per se (*Siezeme v Levy*, 208 AD3d 809, 810 (2nd Dept 2022)). However, a party with the right of way may be held responsible for the accident if he or she did not use reasonable care to avoid the accident even though proceeding with the right-of-way (*Jeong Sook Lee-Son v Doe*, 170 AD3d 973, 975 [2d Dept 2019]). Plaintiff Shokiro's affidavit states that she was the driver when defendants' vehicle entered the oncoming traffic and struck her vehicle.

In opposition to the motion, defendant rebutted plaintiff's *prima facie* entitlement to summary judgment. Defendant's offered affidavit testimony that after Shokiro initially slowed down and yielded to defendant as he entered the oncoming traffic to pass a FedEx truck, Shokiro accelerated causing the accident (NYSCEF 21, ¶¶3-5). Therefore, the jury must determine whether Shokiro failed to exercise reasonable care to avoid the accident (*Jeong Sook Lee-Son v Doe*, 170 AD3d 975). Based on this conflicting affidavit testimony, summary judgment must be denied as to plaintiff Shokiro (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175). The motion is granted as to plaintiff Mirzoev, the passenger in Shokiro's vehicle.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for summary judgment on liability and dismissing defendants, first, fourth and twelfth affirmative defenses as to plaintiff Shokiro is denied, and it is further

ORDERED that this action shall proceed to trial on the issues of liability and damages as to plaintiff Shokiro, and it is further

ORDERED that plaintiffs' motion for summary judgment on liability and dismissing defendants, first, fourth and twelfth affirmative defenses as to plaintiff Mirzoev is granted and this action shall proceed to trial on damages only as to plaintiff Mirzoev.

Plaintiffs argue that the Court's rulings are inconsistent, *i.e.*, defendant Gomez cannot be negligent as a matter of law as to the passenger [Mirzoev] but not the driver [Shokirov]. The Court agrees.

It is well established a motion for leave to reargue is addressed to the sound discretion of the court and affords the moving party an opportunity to show that the court overlooked or misapprehended matters of fact or the law, or for some reason mistakenly arrived at its earlier decision (see CPLR § 2221 [d] [2]; *JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 776, 778 [2d Dept 2018]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2d Dept 2015]). Such a motion "shall not include any matters of fact not offered on the prior motion" (*Williams v Abiomed, Inc.*, 173 AD3d 1115, 1116 [2d Dept. 2019] [internal citations omitted]; CPLR § 2221 [d] [2]). Such a motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*Williams v Abiomed, Inc.*, 173 AD3d 1116).

The Court, in its discretion, grants defendants' motion to reargue the Order dated 2/27/2025 and, upon reargument, adheres to its initial determination that defendant Gomez was negligent as a matter of law.

The Court also grants plaintiffs' motion to renew and reargue and, upon reargument, grants summary judgment to plaintiffs Shokiro and Mirzoev on liability and dismisses defendants first, fourth and twelfth affirmative defenses because (1) the Court's rulings in the 2/27/2025 Order were inconsistent on liability and (2) the newly discovered video dash camera footage demonstrates that defendant Gomez was negligent as a matter of law, without any

negligence on the part of plaintiff Shokiro, as it depicts him driving on the double yellow line and failing to yield to the plaintiffs' vehicle in the oncoming traffic.

The Court has considered the parties remaining arguments and finds them to be either academic or without merit.

Accordingly, it is hereby

ORDERED that defendants' motion to reargue the Order dated 2/27/2025 and denying summary judgment to plaintiffs is DENIED (MS 002), and it is further

ORDERED plaintiffs' motion to renew and reargue the Order dated 2/27/2025 and upon renewal and reargument, granting summary judgment on liability to plaintiffs SHOKIRO and MIRZOEV is GRANTED (MS 003), and it is further

ORDERED defendants, first, fourth and twelfth affirmative defenses are dismissed as to plaintiffs SHOKIRO and MIRZOEV, and it is further

ORDERED that this action shall proceed to trial on the issue of damages only.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: 8/28/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____