

Azizov v Navikhon

2025 NY Slip Op 33640(U)

September 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 532442/2023

Judge: Carolyn E. Wade

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At an IAS Term, Part 84, 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 23rd day of September, 2025

PRESENT: HON. CAROLYN E. WADE, J.S.C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
JASUR AZIZOV,

Plaintiff,

Index No. 532442/2023

- against -

DECISION AND ORDER

SAYIFKHONOV NAVIKHON,
DJURABEK A. ASADAV,
SAMUEL B. LAMPHEAR,
SOURDOUGH PRODUCTION, LLC
and HADDAD’S OF NEW YORK, INC.

Mot. Seq. 1

Defendants,

-----X

Plaintiff, JASUR AZIZOV (“Azizov”), moves for an Order (1) granting Summary Judgment on the issue of liability against Defendants, SAMUEL B. LAMPHEAR (“Lamphiear”), SOURDOUGH PRODUCTION, LLC (“Sourdough”), and HADDAD’S OF NEW YORK (“Haddad’s”) and (2) striking Defendants’ Affirmative Defenses as to Azizov’s comparative fault. Upon oral argument, and the reading of the following papers, NYSCEF Doc. Nos. 20-29, 32-35, and 37, Azizov’s Motion (Seq. 1) is decided as follows:

RELEVANT PROCEDURAL HISTORY

Azizov previously commenced an action with “Nabikhon Sayitkhonov” (named herein as Sayifkhonov Navikhon) (“Sayitkhonov”), as Co-Plaintiff, against Defendants Lamphiear, Sourdough, and Haddad’s under Index Number 537749/2022 (the “First Action”). Defendants

Lamphiear, Sourdough, and Haddad's asserted counter-claims for common law indemnification and contribution against Sayifkhonov for causing the alleged accident.

Thereafter, Azizov commenced the instant action under Index 532442/2023 (the "Second Action") against Defendants Lamphiear, Sourdough, and Haddad's, as well as Defendants SAYIFKHONOV NAVIKHON ("Sayitkhonov") and DJURABEK A. ASADAV ("Asadav"). Defendants filed cross-claims against one another in the Second Action.

In both actions, Azizov alleges that, on November 10, 2022, he was a passenger in a vehicle operated by Sayifkhonov when it came into contact with a vehicle owned and operated by Defendants Lamphiear, Sourdough, and Haddad's. In his Complaint, Azizov asserts, "[t]hat the said occurrence and serious injuries sustained by this plaintiff were occasioned through the negligence of the defendants...." (Compl. in the Second Action at ¶37).

Defendants Lamphiear, Sourdough, and Haddad's moved for Default Judgment on the Counter-Claim against Sayitkhonov in the First Action (Mot. Seq. 4). Sayitkhonov cross-moved for an extension of time to respond to the Counter-Claim (Mot. Seq. 6 in the First Action). After oral argument, the Court denied Default Judgment and granted Sayitkhonov an extension of time to reply to the Counter-Claim (NYSCEF Doc. 153 in the First Action). The Court considered the arguments and concluded that granting Default Judgment on the Counter-Claim against Sayitkhonov would confuse the jury, could result in differing outcomes, and was against the interests of justice, as the allegations made in Sayitkhonov's Complaint had not been determined.

Sayitkhonov also moved to consolidate the First Action and Second Action (Mot. Seq. 5). Azizov supported this motion on the basis that both actions involved "the same parties, similar questions of law, and similar questions of fact" (NYSCEF Doc. 147 in the First Action). Azizov also stated that "[t]he allegations against the Defendants are generally the same and the fact pattern

is identical.” *Id.* at ¶ 4. The Court ordered that the two actions be joined for the purposes of trial (NYSCEF Doc. 150 in the First Action, and NYSCEF Doc. 12 in the Second Action).

Sayitkhonov also moved for Summary Judgment on the issue of liability against Defendants Lamphiear, Sourdough, and Haddad’s in the First Action (Mot. Seq. 8). Sayitkhonov argued that the Court should grant pre-discovery Summary Judgment, as he and Azizov were in a parked vehicle that was struck by Defendants. Further, Sayitkhonov argued that Defendants “failed to provide any non-negligent explanation for the collision that occurred, nor ha[ve] Defendant[s] offered any theory of liability that might support a finding that another party was responsible for this collision.”

In opposition, Defendants submitted an affirmation of Lamphiear, and photographs of the accident scene, establishing that Sayitkhonov’s negligence was the sole proximate cause of the accident. Azizov also opposed Sayitkhonov’s motion on the basis that “Sayitkhonov was negligent in parking his vehicle in a location which it was foreseeable that an accident could ensue and by illegally parking his automobile in a no parking area of Hewes Street in Brooklyn causing Plaintiff Azizov’s injuries” (NYSCEF Doc. 156).

Azizov further argued that Sayitkhonov’s illegal parking was a foreseeable, contributing fact and “a material issue of triable fact which should be heard by a jury at the time of trial.” *Id.* at ¶¶ 16 and 18. After oral argument, this Court denied Sayitkhonov’s motion for Summary Judgment with leave to renew after the completion of discovery (NYSCEF Doc. 172).

Sayitkhonov filed a Motion to Sever Azizov’s claims from Sayitkhonov’s claims (Mot. Seq. 9). The Court denied severance “on the basis that there are common issues of fact between the two matters that prohibit the matter from being severed” (NYSCEF Doc. 173).

THE INSTANT MOTION

Pursuant to CPLR § 3212(b), the standard for granting Summary Judgment hinges on whether there are any genuine issues of material fact that must properly be resolved at trial. Therefore, Summary Judgment is only proper when a Court determines that there are no issues of material fact to warrant a need for trial. *Nomura Asset Capital Corp. v Cadwalader, Wickersham & Taft LLP*, 26 N.Y.3d 40 (2015). When it is deemed just to find Summary Judgment on one or more causes of action, but not all, then those claims determined must be severed from the remaining claims. CPLR § 3212(b) and (e); see also *Bennett v. Long Is. Light. Co.*, 262 A.D.2d 437 (2nd Dept 1999) (“without a severance there can be only one judgment entered in a civil action”); *Marasia v. Noyl Coram, Inc.*, 260 A.D.2d 607 (2nd Dept 1999).

“[A] motion for summary judgment ‘should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility.’” *Ruiz v. Griffin*, 71 A.D.3d 1112 (2nd Dept 2010). Only where the evidence demonstrates that parties are entitled to judgment as a matter of law should judgment be granted. *Winegrad v. NY Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). The Court is required to view the evidence in the light most favorable to the non-moving party and afford them the benefit of every favorable inference. *Ruiz v. Griffin*, 71 A.D.3d at 1115.

For the reasons set forth herein, Azizov has failed to show that he is entitled to Summary Judgment on the issue of liability as against Defendants Lamphiear, Sourdough, and Haddad’s. Azizov moves against Lamphiear, Sourdough, and Haddad’s, *only*, and asks the Court to enter judgment against them, which would require those claims to be severed from those made by, or against, Sayitkhonov and Asadav. As this Court previously held, the claims against Defendants

Lamphiear, Sourdough, Haddad's, Sayitkhonov, and Asadav arise from common questions of law and fact and cannot be severed.

Finding liability as against *some* of the Defendants in the Second Action could lead to inconsistent verdicts and rulings. Azizov's claims against Lamphiear, Sourdough, and Haddad's in the First Action would remain adjudicated, as he has only moved for Summary Judgment in the Second Action. Moreover, the cross-claims, and counter-claim, asserted against Defendants in both Actions, as well as Azizov's claims against Sayitkhonov and Asadav in the Second Action, would remain undetermined. Therefore, in the interests of justice, consistency, and judicial economy, Summary Judgment is **DENIED**.

Likewise, "[a] party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment." *Martinez v. 305 W. 52 Condominium*, 128 A.D.3d 912 (2nd Dept 2015) (quoting *Malester v. Rampil*, 118 A.D.3d 855 (2d Dept 2014)); CPLR § 3212 (f). As stated in *Malester*, "[a] party opposing summary judgment is entitled to obtain further discovery when it appears that facts supporting the opposing party's position may exist but cannot then be stated." See also *Cruz v. Fanoush*, 214 A.D.3d 703 (2nd Dept 2023) (denying Plaintiff's motion for Summary Judgment in a motor vehicle accident where no depositions or medical examinations had been conducted); *Villalba v. Brady*, 183 A.D.3d 850 (2nd Dept 2020); *Herrera v. Gargiso*, 140 A.D.3d 1122 (2nd Dept 2016); *Amico v. Melville Volunteer Fire Co., Inc.*, 39 A.D.3d 784 (2nd Dept 2007); *Adrianis v. Fox*, 30 A.D.3d 550 (2nd Dept 2006).

Herein, no party has been deposed in either the First or the Second Action. Contrary to Azizov's arguments, Defendants Lamphiear, Sourdough, and Haddad's do not have all of the facts within their knowledge. Defendant Lamphiear attests that he did not see anyone in the adverse vehicle; rather, it was not running and the hazard lights were off. He further attests that he honked

his horn and the adverse vehicle did not move. Notably, he attests that he did not feel any impact to his vehicle as he navigated through the intersection. This is contradicted by the affirmations of Sayitkhonov and Azizov, who both claim that they were seated in the vehicle when an impact occurred. As Defendants have not had the opportunity to depose each party and explore all relevant facts, Defendants cannot now state all facts to support their defense.

Moreover, Sayitkhonov signed a “Report of Motor Vehicle Accident” that states the accident occurring on Kent Avenue, not Hewes Street. This contradicts his affidavit, creating a question of fact. Therefore, questions of fact remain, and Summary Judgment is not appropriate. Questions of fact also remain as to whether Sayitkhonov was the sole proximate cause of the accident. *Stanford v. Smart Pick, Inc.*, 134 A.D.3d 1096 (2nd Dept 2015). Based upon the photographs submitted, questions of fact exist as to whether Sayitkhonov illegally parked his vehicle in violation of VTL §1202 (a) and 34 RCNY 4-08. *Vainer v. DiSalvo*, 79 A.D.3d 1023 (2nd Dept 2010) (“A violation of the Vehicle and Traffic Law constitutes negligence as a matter of law.”); see also *Pena v. Spade*, 145 A.D.3d 791 (2nd Dept 2016); *Sullivan v. Locastro*, 178 AD2d 523 (2nd Dept 1991); *Ferrer v. Harris*, 55 N.Y.2d 285 (1982). For the same reasons, Azizov is not entitled to dismissal of Defendants’ Affirmative Defenses of comparative negligence, including assumption of risk, since the alleged accident was foreseeable to both occupants of the illegally parked vehicle.

Lastly, the affirmations of Azizov and Sayitkhonov do not constitute admissible evidence. Neither affirmation complies with CPLR § 2106, as they do not affirm the statements to be true under the penalties of perjury under the laws of New York. These affirmations, both submitted to support Azizov’s and Sayitkhonov’s respective motions for Summary Judgment, are self-serving and conclusory. *Mitchell v. 148th St. Jamaica Condominium*, 221 A.D.3d 596 (2nd Dept 2023)

(denying Defendant Summary Judgment, as it failed to establish a prima facie entitlement when “it submitted only a self-serving and conclusory affidavit from its president in support of its motion.”); *TDS Leasing, LLC v. Tradito*, 148 A.D.3d 1079 (2nd Dept 2017) (reversing the Trial Court’s Decision to grant the cross-movant’s motion for Summary Judgment where they submitted “only their conclusory and self-serving affidavits.”); see also *Thorne v. Cauldwell Terrace Constr. Corp.*, 63 A.D.3d 826 (2nd Dept 2009); *Griffin v. Wilkarm Props.*, 218 A.D.2d 639 (2nd Dept 1995).

Based upon the foregoing, and in viewing the evidence in the light most favorable to Defendants Lamphiear, Sourdough, and Haddad’s and affording them the benefit of every favorable inference, Azizov has not established that he is entitled to Summary Judgment.

Accordingly, Azizov’s Motion (Seq. 1) is hereby **DENIED** without prejudice.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn E. Wade, J.S.C

Hon. Carolyn E. Wade
Supreme Court Justice