

**Isakulov v Yu Zhong**

2025 NY Slip Op 34529(U)

November 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 515315/2024

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 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 25<sup>th</sup> day of November, 2025.

P R E S E N T :

HON. WAVNY TOUSSAINT,  
Justice.

\_\_\_\_\_  
NODIR ISAKULOV,

Plaintiff,

-against-

YU ZHONG, DAVID H. TRUCKING CO LLC  
and JURABEK ISKANOV,

Defendants.

Index No.: 515315/2024

**DECISION AND ORDER**

\_\_\_\_\_  
The following papers numbered 1 to read herein  
Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed  
Cross Motion and Affidavits (Affirmation) Annexed  
Answers/Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)  
Affidavit (Affirmation)  
Other Papers

Papers Numbered  
18-21  
\_\_\_\_\_  
25-26  
29-31  
\_\_\_\_\_

Upon the foregoing papers, defendants move (Seq. 01) for an order, pursuant to CPLR § 8501, directing plaintiff to give security for costs in the amount of \$10,000, pursuant to CPLR § 8501. Plaintiff opposes the motion.

**Background**

This is a personal injury action arising from an automobile accident which occurred on March 14, 2024, when the vehicle driven by plaintiff allegedly came into contact with

the vehicle of defendant, at or near the intersection of Metropolitan Avenue/Orient Place, in Brooklyn, NY. Plaintiff commenced this action on June 3, 2024, to recover for personal injuries allegedly sustained as a result of the accident. Defendants imposed their answer on August 12, 2024. As relevant here, defendants filed the within motion on August 6, 2025.

### **The Parties' Contentions**

Defendants argue plaintiff did not reside in New York State at the time the action was commenced. Defendants allege, through their counsel's affirmation, that plaintiff was a resident of Ohio at the time the action was commenced, and that Ohio is where plaintiff currently resides. As proof of plaintiff's Ohio residency, defendants point to an alleged subsequent automobile accident occurring March 20, 2024 (six days after the subject accident herein), in which plaintiff was identified as having an Ohio address. Defendants also point to the Bill of Particulars in which plaintiff states generally that he resides in "Kings County, New York", and asks the Court to conclude that plaintiff's failure to specify a specific New York address, is also a basis to conclude that plaintiff did not reside in New York State when the action was commenced.

Plaintiff opposes, contending defendants have misconstrued the language of CPLR § 8501, as the statute clearly indicates the reckoning timeframe for the residency determination is "when the motion is made", not the commencement date of the action asserted by defendants. Accordingly, plaintiff submits an affirmation stating he resided in Brooklyn, NY as of August 6, 2025, the date defendants filed the within motion, and contends that defendants, nonetheless, have failed to present evidence demonstrating he

resided outside New York State “on the date Defendants’ motion was made” (NYSCEF Doc. No. 25). Plaintiff contends that security for costs of \$10,000 is exorbitant, and in any event, is unwarranted since, again, he resided in New York at the time defendants’ motion was filed.

In reply, defendants seek to refute plaintiff’s affirmation of New York residency with the submission of a certified copy of a new business filing receipt from the Ohio Secretary of State, referencing the date of filing as September 2, 2025 and listing plaintiff as the “Agent/Registrant”, with a stated Ohio address. Based on this submission, defendants argue plaintiff clearly resides outside New York State.

#### Discussion

"Security for costs is 'a device ordinarily used against a nonresident plaintiff to make sure that if he loses the case he will not return home and leave defendant with a costs judgment that can be enforced only in plaintiff's home state'" (*Clement v Durban*, 147 AD3d 39, 42 [2d Dept 2016], citing *Meister v Engine Trans. Corp.*, 138 Misc 2d 880, 881 [Civ Ct, NY County 1988], quoting Siegel, NY Prac § 414). "By directing a nonresident to post a bond, the defendant is protected from frivolous suits and is assured that, if successful, he will be able to recover costs from the plaintiff" (*Id.*; citations omitted).

Here, the controlling statutes are CPLR §§8501, 8502 and 8503. CPLR § 8501, which is labeled "Security for costs," provides, in part: "Except where the plaintiff has been granted permission to proceed as a poor person or is the petitioner in a habeas corpus proceeding, upon motion by the defendant without notice, the court or a judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic

corporation, a foreign corporation licensed to do business in the state or a resident of the state when the motion is made" (*emphasis supplied*; CPLR § 8501 [a]). CPLR § 8502 provides that until security for costs is given pursuant to the order of the court, all proceedings other than to review or vacate such order shall be stayed, and that if the plaintiff shall not have given security for costs at the expiration of thirty (30) days from the date of the order, the court may dismiss the complaint upon motion by the defendant. Finally, CPLR § 8503 provides that: "Security for costs shall be given by an undertaking in an amount of five hundred dollars in counties within the city of New York, and two hundred fifty dollars in all other counties, or such greater amount as shall be fixed by the court that the plaintiff shall pay all legal costs awarded to the defendant."

On the motion, defendants seek the imposition of security for costs in the amount of \$10,000. Defendants argue plaintiff was a resident of Ohio at the time the action was commenced and rely exclusively on their counsel's affirmation for the unsupported assertion that plaintiff was involved in a subsequent automobile accident which occurred March 20, 2024 (six days after the subject accident herein), wherein plaintiff was identified as having an Ohio address. Defendant fails to submit any independent admissible evidence to substantiate the alleged March 20th automobile accident and counsel's affirmation to this effect is insufficient to do so (*Mahoney v Jackson's Marina, Inc.*, 305 AD2d 555, 555 [2d Dept 2003]; *see also Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]). The inference of plaintiff's use of an Ohio address as of March 20, 2025, is therefore rejected.

Moreover, it appears defendants misapprehend the controlling statutory language when repeatedly referring to the commencement date of the action as the reckoning

timeframe for determining residency status. CPLR § 8501 clearly states the motion date is controlling on such determinations. Accordingly, the arguments proffered by defendants based on the commenced date of the action are without merit.

It appears plaintiff presently resides in Ohio, though the Ohio Secretary of State submission does not indicate whether plaintiff established such residency either before or after the date defendants' motion was filed on August 6, 2025. Plaintiff's conclusory, self-serving affidavit does not clarify this question (*Novakovic v Wells Fargo Bank, N.A.*, 227 AD3d 1009, 1012 [2d Dept 2024]). Mindful of the intended purpose of CPLR § 8501, and in the Court's discretion, plaintiff is directed to post \$500 as security for costs (CPLR § 8106; *Yarwood v County of Suffolk*, 174 AD3d 954, 954-955 [2d Dept 2019]; CPLR § 8503). Defendants' request for costs of \$10,000 is excessive and is denied.

### Conclusion

Accordingly, it is hereby

**ORDERED**, that the motion is granted to the extent that, plaintiff shall give security for costs in the amount of \$500 with respect to the defendants, by posting an undertaking with the Kings County Clerk, in the form of a surety bond, a deposit of cash, or bank check, pursuant to CPLR § 8501; and it is further

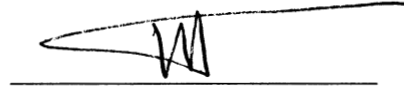
**ORDERED**, that such undertaking shall remain in effect until further order of this Court; and it is further

**ORDERED**, that pursuant to CPLR § 8502, all proceedings in this case are stayed pending the posting of the undertaking, and if the plaintiff fails to post the undertaking, at

the expiration of 30 days from the date of entry of this order, the court may dismiss the complaint upon motion by defendants and award costs in their favor.

This constitutes the decision and order of the Court.

E N T E R



J.S.C.

**HON. WAVNY TOUSSAINT  
J. S. C.**

KINGS COUNTY CLERK  
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