

Oganesian v Lemkin

2026 NY Slip Op 31445(U)

April 8, 2026

Supreme Court, Kings County

Docket Number: Index No. 516141/2021

Judge: Anne J. Swern

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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 8th day of April 2026

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

DECISION & ORDER

INNA OGANESIAN, as the Administrator of the Estate of MARYANA SAITSKAYA, deceased,

Index No.: 516141/2021

Plaintiff(s),

Motion Seq.: 005 & 006

-against-

Return Date: 02/05/2026

IGOR LEMKIN; GRAND MARKET INTERNATIONAL CORP. d/b/a NET COST MARKET NC, 3100 OCEAN AVE LLC d/b/a NET COST MARKET; and NET COST MARKET,

Defendant(s).

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

**NYSCEF
Papers
Numbered**

005	Notice of Motion and Supporting Documents	77-80
	Affirmation in Opposition.....	110
	Reply Affirmation	123
006	Notice of Motion and Supporting Documents	82-95, 111-112
	Affirmations in Opposition and Supporting Documents	120-124
	Reply Affirmation and Supporting Documents	125

Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for personal injuries sustained by the decedent arising out of a motor vehicle accident on 7/3/2018.¹ It is undisputed that at the time of the accident, the decedent was at the cash register paying for groceries inside the Net Cost Market located at 3100 Ocean Parkway, Brooklyn, New York.² The accident occurred when the vehicle operated by Igor

¹ The decedent passed away from an illness unrelated to the accident.
² Defendants GRAND MARKET INTERNATIONAL CORP. d/b/a NET COST MARKET NC, 3100 OCEAN AVE LLC d/b/a NET COST MARKET; and NET COST MARKET are collectively referred to as “Net Cost.”

Lemkin crashed through the front window from the parking lot, causing decedent to fall and sustain lacerations and injuries from broken shards of glass. The “Accident Investigation Report” prepared by Net Cost described the accident as follows: “*Customer was at checkout between the 2nd and 3rd register when a car crashed into the store and hit both registers (2/3). The customer fell back but was not hit by the car.*” The videos from defendants’ surveillance cameras inside and outside the store confirm this sequence of events.

Plaintiff has moved for summary judgment per CPLR § 3212 granting summary judgment on the issue of liability against defendant Lemkin. Net Cost has also moved for summary judgment dismissing the case against them arguing that Lemkin was the sole proximate cause of the accident.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). “A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court’s only role upon a motion for summary judgment is 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 must view 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]).

Plaintiff's motion for summary judgment is granted. Lemkin failed to rebut plaintiff's prima facie showing that Lemkin was negligent as a matter of law. (*Giuffrida v Citibank*, 100 NY2d 81 and *Alvarez v. Prospect Hospital*, 68 NY2d 324). Notwithstanding any hearsay challenge to statements in the police report, the video conclusively establishes that Lemkin accelerated as he approached the parking spot [in front of the window] before crashing into the store (Ex. #E1 at 5:17 to 5:22 timestamp). However, Net Cost's motion for summary judgment is denied.

Although Net Cost sustained its initial burden on summary judgment, Lemkin offered expert testimony that defendants' failed to have pillars or some other device to prevent cars from entering the store in the event they failed to stop (*id.*). A jury may find that Lemkin was 100% liable for the accident or partially liable by attributing a percentage of negligence to Net Cost for its alleged failure to protect its patrons. (*Negri v Shop & Stop, Inc.*, 65 NY2d 626; *Ayotte v Gervasio*, 81 NY2d 1063).

The Court has considered the parties' remaining contentions and found same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment per CPLR § 3212 on the issue of liability against defendant IGOR LEMKIN is GRANTED (MS 005), and it is further

ORDERED the motion by defendants GRAND MARKET INTERNATIONAL CORP. d/b/a NET COST MARKET NC, 3100 OCEAN AVE LLC d/b/a NET COST MARKET; and NET COST MARKET for summary judgment per CPLR § 3212 dismissing this action against them is DENIED.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: April 8, 2026