

<b>Hazzard v V &amp; L Pizzeria &amp; Rest.</b>
2026 NY Slip Op 31859(U)
April 24, 2026
Supreme Court, New York County
Docket Number: Index No. 155027/2023
Judge: Christopher Chin
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. CHRISTOPHER CHIN PART 22

*Justice*

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INDEX NO. 155027/2023

ELAINE HAZZARD,

MOTION DATE 03/26/2026

Plaintiff,

MOTION SEQ. NO. 002

- v -

V & L PIZZERIA & RESTAURANT D/B/A V & T  
RESTAURANT, INC., NATALIO MALDONADO SOSA

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and after oral argument, it is

ORDERED that defendants' motion for summary judgment, pursuant to CPLR §3212, to dismiss plaintiff's complaint on the basis that plaintiff cannot meet the "serious injury" threshold required by Insurance Law §5104 as defined in Insurance Law §5102(d) is denied for the reasons set forth below.

This is a personal injury action involving a collision between plaintiff, a pedestrian, and an E-bike operated by defendant Natali Maldonado Sosa (Sosa), an employee of defendant V & L Pizzeria & Restaurant d/b/a V & T Restaurant, Inc. (V&T Restaurant). The accident occurred on August 31, 2020, at approximately 8:00 pm. As plaintiff was walking in a crosswalk on Broadway and West 93<sup>rd</sup> Street, she was struck by defendant Sosa who was riding an E-bike, causing her to fall.

Plaintiff testified that she lost consciousness briefly and thereafter was bleeding from a gash above her left eye. Plaintiff was treated with stitches at Mount Sinai Hospital and

discharged. Thereafter, she treated with Dr. David Freeman regarding a scar above her left eye. In October 2021, Dr. Freeman performed surgery on plaintiff's scar. Plaintiff claims a significant disfigurement due to the scar on her face.<sup>1</sup>

Defendants move for summary judgment relying on the report by Dr. Maayan Keshet, who found plaintiff did not have any visual disability to either eye during his examination that took place on May 15, 2025. Defendants also rely on the report of Dr. Robert Goldstein, dated September 22, 2025 who examined plaintiff and found a whitish scar that measures approximately 3 cm in length, by about 0.5 cm in width, in the area of the left temple lateral brow, and minimal asymmetry - 0.8mm between the right and left lateral brow. Dr. Goldstein also found, in the area of hairline on the right side, a scar measuring approximately 2.5-cm with a slight indentation. His report referenced a procedure plaintiff underwent on October 21, 2021, which was to repair the left brow ptosis that caused severe hooding and obstruction of her visual fields. While defense counsel argues that photographs of plaintiff show no evidence of scarring, which is in direct contrast to Dr. Goldstein's report.

Insurance Law § 5104(a) states that "in any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for non-economic loss, except in the case of a serious injury, ...". Significantly, Vehicle & Traffic Law § 125 (e) specifically exempts bicycles with electric assist from the definition of a "motor vehicle" (see *Chinn v Motor Vehicle Accident Indem. Corp.*, 240 AD3d 889, 890 [2d Dept 2025]; *Matter*

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<sup>1</sup> The Bill of Particulars does not allege "significant disfigurement" as a condition that satisfies the serious injury requirement; however, permanent scarring is alleged as an injury from the accident.

*of Govt. Empl. Ins. Co. v Bermeo*, 230 AD3d 1141, 1142-43 [2d Dept 2024]). Since this action involves a collision between a pedestrian and an e-bike, which is exempt from the definition of a motor vehicle, the action does not arise out of the negligent operation of a motor vehicle and the “serious injury” threshold requirement of Insurance Law §5102(d) does not apply. Thus, there can be no defense, as asserted here, based on plaintiff’s failure to meet the “serious injury” threshold requirement (*see Lee v. Piers*, 11 AD 3d 257 (1<sup>st</sup> Dept 2004) [Appellate Division unanimously affirmed the lower court decision by J. Renwick finding the serious injury defense inapplicable where action was not against a covered person and injuries did not arise out of the negligent operation of a motor vehicle]). Defendants’ motion on the basis that plaintiff cannot meet the serious injury threshold is therefore denied.<sup>2</sup>

In any event, even if the serious injury requirement applied here, defendants failed to meet their prima facie burden to establish that plaintiff cannot meet the serious injury threshold. As stated, defendants’ expert, Dr. Goldstein, found a scar on plaintiff’s face. There is no expert testimony that the scar cannot be found to be a significant disfigurement. Moreover, while plaintiff failed to include a “significant disfigurement” as a basis to meet the serious injury threshold, since a defense doctor examination was conducted on plaintiff’s scar and plaintiff included in her bill of particulars “permanent scarring”, it is clear that plaintiff would be asserting this injury to support her claim of serious injury, and there can be no surprise on

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<sup>2</sup> While defendants refer to plaintiff’s Bill of Particulars which indicate that plaintiff’s medical costs were covered by No-Fault, no documents were submitted in support of the motion to substantiate that No-Fault coverage was provided here. In fact, when asked during oral argument if the authorization for the No-Fault records revealed that plaintiff did in fact receive No-Fault benefits, defense counsel did not have that information. Plaintiff’s counsel during oral argument advised that MVAIC denied plaintiff’s claim for No-Fault benefits.

defendants' part (see *Bagan v Tomer*, 139 AD3d 577, 577 [1<sup>st</sup> Dept 2016]; *Yoo v. Wang*, 88 AD3d 991, 991 [2d Dept 2011]).

Additionally, Dr. Goldstein's report noted that plaintiff suffered some visual obstruction as a result of the accident and underwent a procedure on October 21, 2021 - more than one year after the alleged accident. Defendants failed, however, make a prima facie showing as to how plaintiff cannot meet the "significant limitation of use of a body function or system" definition of serious injury. A search of the records revealed a note from plaintiff's doctor dated September 24, 2021, that documented a restriction of plaintiff's visual field of the left eye [NYSCEF Doc. No. 43, at 40-41]. This restriction could be viewed by a trier of fact as constituting a "significant limitation of use of a body function or system." It is well settled that such a limitation need not be permanent to constitute a serious injury (see *Vasquez v Almanzar*, 107 AD3d 538, 539 [1<sup>st</sup> Dept 2013])

As movants failed to meet their prima facie burden, the court need not consider the opposition (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [a movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers]).

The court has considered the parties' remaining contentions and find them either unavailing or moot in light of its determination.

4/24/2026  
DATE

  
CHRISTOPHER CHIN, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE