

**Gomez-Martinez v New York City Tr. Auth.**

2023 NY Slip Op 31074(U)

April 5, 2023

Supreme Court, Kings County

Docket Number: Index No. 509951/2017

Judge: Delores J. Thomas

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an I.A.S. Trial Term, Part 11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams St, Borough of Brooklyn, State of New York, on the 5<sup>th</sup> day of April, 2023.

P R E S E N T :

**HON. DELORES J. THOMAS, J.S.C.**

-----X  
RUBEN MARCO ANTONIO GOMEZ-MARTINEZ,

Plaintiff,

Index No.: 509951/2017

- against -

**DECISION/ORDER**  
Motions in Limine

THE NEW YORK CITY TRANSIT AUTHORITY,  
METROPOLITAN TRANSPORTATION  
AUTHORITY, MTA BUS COMPANY, KHALID M.  
FADLALLA, BALANCED VENDING, INC., and  
MICHAEL NUBE,

Defendants.

-----X

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of these motions are as follows:

**Papers:**

**NYSCEF Document Nos.**

Plaintiff’s Motion in Limine and Affidavits (Affirmations) Annexed	<u>NYSCEF Doc Nos. 126-130; 134; 136</u>
Opposition to Plaintiff’s Motion and Affidavits (Affirmations) Annexed	<u>NYSCEF Doc Nos. 138-151</u>
Defendants’ Motion in Limine and Affidavits (Affirmations) Annexed	<u>NYSCEF Doc Nos. 125; 131-133</u>
Opposition to Defendants’ Motion in Limine and Affidavits	<u>NYSCEF Doc Nos. 137; 152</u>

In advance of the trial in this action, plaintiff and defendants each submitted motions in limine. Plaintiff moves to: (1) preclude the testimony of accident reconstruction expert, C. Bruce Gambardella, P.E. (“Mr. Gambardella”); (2) admit defendants’ internal rules and regulations regarding the Transit Authority’s standards and regulations dealing with the distance a bus operator must keep between his or her vehicle and a vehicle that is in front of it; and (3) unify trial or, in the alternative, permit limited medical testimony on the issue of liability.

Defendants Balanced Vending, Inc. (“Balanced Vending”), and Michael Nube, move to preclude the admission or reference to the traffic ticket Mr. Nube received a few days after the subject accident, for allegedly opening the door of his parked vehicle into traffic.

Defendants The New York City Transit Authority (“NYCTA”), Metropolitan Transportation Authority (“MTA”), MTA Bus Company (“MTA Bus Co.”), and Khalid M. Fadlalla (collectively “TA defendants”), move to preclude plaintiff: (1) from introducing evidence of NYCTA’s procedures which are more stringent than the duty imposed by law; and (2) from eliciting evidence regarding opinions of law from any witness and regarding ultimate issues from experts.

The motions are consolidated for disposition. For the reasons set forth below, plaintiff’s motion is denied; Balanced Vending and Mr. Nube’s motion is denied; and the TA defendants’ motion is granted.

#### Plaintiff’s Motion in Limine

The branch of plaintiff’s motion which seeks to preclude the testimony of defendants’ accident reconstructionist, Mr. Gambardella, is denied. Plaintiff contends Mr. Gambardella’s opinions are speculative and conclusory in that they are not related to existing data and/or properly applied methodology as that methodology is unknown. An expert may not reach a conclusion by assuming material facts not supported by the evidence and may not guess or speculate in drawing a conclusion (*see Cassano v Hagstrom*, 5 NY2d 643 [1959]). Here, the Court is not persuaded by plaintiff’s argument that Mr. Gambardella’s opinions, at this juncture, are speculative. A review of Mr. Gambardella’s expert disclosure reveals the methodologies and facts he relied upon which include a MSMAC analysis, bus movement based on ECM data, and an associated AVI file.

The branch of plaintiff’s motion which seeks to unify the trial is denied. “Unified trials should only be held ‘where the nature of the injuries has an important bearing on the issue of liability’” (*Patino v County of Nassau*, 124 AD3d 738 [2d Dept 2015] quoting *Berman v County of Suffolk*, 26 Ad3d 307, 308 [2d Dept 2006]). Plaintiff contends he cannot establish his prima facie proof of being hit by the Transit Authority bus following too closely and running him over thereby causing “crush injuries” and rebut defendants’ accident reconstructionist without including expert medical testimony by his treating physicians on how such injuries are caused. Notwithstanding, plaintiff submitted the expert disclosure of his accident reconstructionist, Kevin S. Tully, who opined that defendant Mr. Fadlalla operated the Transit Authority bus too close to Plaintiff, who was

either struck by the bus or went down to the ground and was dragged from the lower right front area of the bus. Accordingly, plaintiff failed to demonstrate that evidence regarding the nature and extent of his injuries was probative of the question of liability (*see Wright v New York City Transit Authority*, 142 AD3d 1163 [2d Dept 2016]).

The branch of plaintiff's motion seeking to admit the TA defendants' internal rules and regulations regarding the distance a bus operator must keep between his or her and the vehicle that is in front of it is denied. "An organization's internal rules or manuals, to the extent they impose a higher standard of care than is imposed by law, are inadmissible to establish a violation of the standard of care" (*Foster v Suffolk County Police Department*, 199 AD3d 658 [2d Dept 2021]). Here, Plaintiff seeks to admit the TA Operating Standards and Regulations to show that Mr. Fadlalla was compelled to keep 3 to 5 bus lengths between the bus and plaintiff's bicycle. This is a higher standard of care than what is imposed by law since §1129 of the Vehicle and Traffic Law merely requires "a driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." Moreover pursuant to §1122-a of the Vehicle and Traffic Law states "the operator of a vehicle overtaking, from behind, a bicycle proceeding on the same side of a roadway shall pass to the left of such bicycle at a safe distance until safely clear thereof." Taken together, the internal standards and regulations plaintiff seeks to admit clearly impose a higher standard of care than what is required by law since on its face, the internal standards and regulations do not allow the overtaking of a bicycle, and seemingly disallows a bus from traveling within 3-5 bus lengths of another vehicle whereas the VTL only requires "a reasonably safe distance" between the two vehicles.

#### Defendants' Motions in Limine

Balanced Vending and Mr. Nube's motion to preclude the traffic ticket Mr. Nube received for opening the van door into traffic is denied. Movants contend the fact that Mr. Nube pled guilty to the traffic offense is misleading since he intended to plea not guilty but did otherwise only after missing his court date. Movants also submit that any reference to said ticket only serves as prejudice and lacks probative value since Mr. Nube was

not convicted. Notwithstanding, “it is well settled that a person who pleads guilty to a traffic offense is permitted to explain the reasons for the plea, and it is for the jury to decide what weight, if any, to give to the testimony” (*Guarino v Woodworth*, 204 AD2d 391, 392 [2d Dept 1994]). Accordingly, the motion is denied. Plaintiff can reference the ticket and movants may explain to the jury the reason for the guilty plea.

The TA defendants’ motion in limine is granted. As discussed earlier, the internal standards and regulations are inadmissible since they impose a standard more stringent than that imposed by law. The branch of movants’ motion seeking to preclude plaintiff’s expert from eliciting evidence regarding opinions of law from any witness and regarding ultimate issues from experts is granted since “expert opinion as to a legal conclusion is impermissible” (*Episcopal Diocese of Long Island v St. Matthias Nondenominational Ministries, Inc.*, 157 AD3d 769 [2d Dept 2018]).

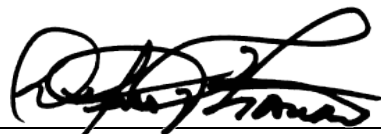
Accordingly, it is hereby ORDERED

ORDERED that plaintiff’s motion in limine is denied; and it is further

ORDERED that the motion in limine of defendants Balanced Vending, Inc. and Michael Nube is denied; and it is further

ORDERED that the motion in limine of defendants The New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, and Khalid M. Fadlalla is granted.

E N T E R :



HON. BELORES J. THOMAS, J.S.C.