

**Stevenson v Singh**

2023 NY Slip Op 33584(U)

October 11, 2023

Supreme Court, New York County

Docket Number: Index No. 155769/2019

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DENISE M DOMINGUEZ PART 21**

*Justice*

-----X

**INDEX NO. 155769/2019**

LASHIL STEVENSON

**MOTION SEQ. NO. 001**

Plaintiff

- v -

HARRINARINE SINGH, NEW YORK CITY TRANSIT  
AUTHORITY, JOHN DOE,

**DECISION AND ORDER ON  
MOTION**

Defendants

-----X

NEW YORK CITY TRANSIT AUTHORITY

Third-Party  
Index No. 595668/2021

Third-Party Plaintiff

-against-

WAREHOUSE WINES & SPIRITS, 735 BROADWAY WINES,  
INC., 735 BROADWAY WINES IN. D/B/A WAREHOUSE WINES  
& SPIRITS

Third-Party Defendants

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for

JUDGMENT - SUMMARY

For the reasons that follow, the motion for summary judgment by Defendant NEW YORK CITY TRANSIT AUTHORITY (TRANSIT) is granted and Plaintiff's cross-motion seeking partial summary judgment on the issue of liability is granted in part.

***Background***

In this personal injury matter, Plaintiff, alleges falling and sustaining injuries while a passenger on a public bus owned by TRANSIT. Plaintiff specifically alleges that on May 23, 2018, while on the M15 bus heading north on 1<sup>st</sup> Avenue, in the vicinity of 18<sup>th</sup> Street in Manhattan,

the bus came to a violent and unnecessary sudden stop as it was negligently cut off by a white van, owned and operated by Defendant, HARRINARINE SINGH (SINGH).

On June 11, 2019, Plaintiff commenced this negligence action against both TRANSIT and SINGH. Soon thereafter, on July 23, 2021, TRANSIT commenced a third-party action against Defendant SINGH's employer, WAREHOUSE WINES & SPIRITS, 735 BROADWAY WINES, INC., 735 BROADWAY WINES IN. D/B/A WAREHOUSE WINES & SPIRITS (WAREHOUSE).

TRANSIT now post note of issue moves for summary judgment pursuant to CPLR 3212. TRANSIT alleges that it is not liable for Plaintiff's injuries because the proximate cause of the accident was SINGH making an improper right turn causing TRANSIT's driver, to engage the breaks to avoid a collision. Plaintiff, SINGH. and WAREHOUSE oppose.

Plaintiff also cross-moves for partial summary judgment on the issue of liability against TRANSIT and SINGH.

### ***TRANSIT's Summary Judgment Motion***

In any action including a negligence action, any party moving for summary judgment has the high burden of establishing entitlement to judgment as a matter of law and dispelling any material questions of fact for a trial (CPLR 3212 [a]; *Andre v. Pomeroy*, 35 NY2d 361[1974]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

A common carrier moving for summary judgment in an action by an injured passenger, may not be liable if it establishes that the emergency doctrine applies by showing that its actions were reasonable based on an unforeseen occurrence that was not of his or her own making (*Rodriguez v. New York City Transit Auth.*, 172 AD3d 508 [1st Dept 2019]; see e.g. *see Castillo v. New York City Transit Auth.*, 188 AD3d 484 [1<sup>st</sup> Dept 2020]; *Urquhart v. New York City Transit*

*Auth.*, 85 NY2d 828 [1995]). Under this emergency doctrine, the law recognizes that when an person is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, resulting in making a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context (*Rivera v. New York City Transit Auth.*, 77 N.Y.2d 322 [1991]).

Further in relation to tort actions by bus passengers, the emergency doctrine may apply to city buses when it is established that the bus driver's only option was to stop short in order to avoid colliding with a vehicle that suddenly entered its lane (*Castillo*, 188 AD3d 484; *Fay v New York City Tr. Auth.*, 149 AD3d 593 [1st Dept 2017]; *Orsos v Hudson Tr. Corp.*, 111 AD3d 561 [1st Dept 2013];

While it is often a jury question whether a person's reaction to an emergency was reasonable, summary resolution is possible when the moving party presents sufficient evidence to support the reasonableness of the actions (*Ward v. Cox*, 38 AD3d 313 [1st Dept 2007]; *see also Castillo v. New York City Transit Auth.*, [1st Dept 2020]; *see e.g. Iwata v Manhattan & Bronx Surface Tr. Operating Auth.*, 144 AD3d 539 [1st Dept 2016].

Here, TRANSIT primarily relies upon the authenticated video surveillance footage of the bus to argue that its bus operator was presented with an emergency (*see Rodriguez*, 172 AD3d 508). The video shows footage from approximately 14:40:00 to 15:10:00 on May 23, 2018, from eight camera angles. There is one camera that is positioned from the front of the bus, looking on to the roadway. The remaining cameras show the interior of the bus from various angles. The video also showed the rate of speed of the bus.

Based on the front facing video at approximately 14:25:56 the bus comes to a stop on 1<sup>st</sup> Avenue and 15<sup>th</sup> Street to let off passengers. Afterwards, the bus continues northbound along 1<sup>st</sup> Avenue in the “bus only” lane (the right most lane of traffic, adjacent to a parking lane) to the intersection of 18<sup>th</sup> Street. The bus does not change lanes or veer out of its lane during this time. As the bus approaches the intersection of 18<sup>th</sup> Street, there are no vehicles directly in front of the bus. There are stopped, parked vehicles to its right and moving vehicles on its left. However, at approximately 14:47:18, a small white van, operated by Defendant SINGH, moves into the bus only lane, in front of the bus, and cuts off the bus making a right turn on to 18<sup>th</sup> Street. Based on the painted white signs on the roadway, the lane to the left of the bus in which SINGH’s white van was traveling, and the bus lane have large white arrows signs facing straight with the word “only” painted in large white letters.

TRANSIT also submits an affidavit from its bus operator consistent with his deposition testimony, in which he attests that upon seeing the van veer into its lane, he immediately engaged the brakes to avoid a collision and moved the bus towards the right. As a result, he was able to avoid colliding with the van and the parked vehicles to the right.

Upon review, TRANSIT has established that the emergency doctrine is applicable here. TRANSIT’s evidence shows that SINGH’s actions in abruptly and illegally cutting off the bus, veering into a bus only lane, and disregarding the signs to continue straight, were the reason TRANSIT’s bus was faced with making a sudden and erupt stop to avoid colliding with Sing’s vehicle and striking and damaging the parked vehicles to its left (*see Santana-Lizardo v. New York City Transit Auth.*, 186 AD3d 117 [1<sup>st</sup> Dept 2020]; *Bennett v. New York City Transit Auth.*, 212 AD3d 518[1st Dept 2023]). Moreover, the video does not show the bus operator driving at

excessive speed nor does the video show that the bus operator was otherwise driving in a dangerous or improper manner. Thus, opposition papers will now be considered (see *Alvarez*, 68 NY2d 320).

In opposition Plaintiff, SINGH and WAREHOUSE argue that questions of fact exist. SINGH specifically alleges that a trier of fact should decide whether TRANSIT's driver failed to see SINGH's turning light signal. WAREHOUSE further alleges that the questions of fact exist as to the applicability of the emergency doctrine. SINGH and WAREHOUSE also argue credibility issues for a trial. Plaintiff also argues that credibility issues exist warranting a trier of fact.

Yet these arguments are not convincing since the video footage recorded the rules of the road and also recorded how the accident happened (see *Rodriguez*, 172 AD3d 508). Regardless whether SINGH used or did not use the turn signal light, SINGH's unlawful actions in moving his van into a bus only lane, unlawfully turning right from a lane that prohibits right turns and that specifically instructs drivers to stay straight "only," causing an unexpected circumstance for the bus driver who was lawfully operating the bus on the bus only lane and who was entitled to anticipate that SINGH would obey the traffic laws (*Ward v. Cox*, 38 AD3d 313). Thus, in light of SINGH's failure to obey traffic laws, his rate of speed or whether he used or did not use his turning signal are immaterial and do not require a trial (see *id.*).

Accordingly, TRANSIT has met its *prima facie* burden and the opposing papers have not raised material questions of fact.

### ***Plaintiff's Cross-Motion***

Plaintiff seeks partial summary judgment on the issue of liability from all Defendants, an order striking all affirmative defenses as to comparative negligence, and denial of TRANSIT's summary judgment motion.

Since it is undisputed, that Plaintiff was an innocent passenger, the branch of Plaintiff's motion seeking a finding that Plaintiff is not comparatively negligent and thus striking affirmative defenses as to comparative negligence is granted as to all Defendants except TRANSIT (*see Johnson v. Phillips*, 261 AD2d 269 [1<sup>st</sup> Dept 1999]; *see e.g. Oluwatayo v Dulinayan*, 142 AD3d 113 [1<sup>st</sup> Dept 2016]).

For the reasons above, the part of Plaintiff's motion seeking summary judgment on the issue of liability as to TRANSIT is denied.

As to the part of Plaintiff's motion seeking summary judgment on the issue of liability as to all other Defendants, that motion is granted only as to SINGH as this Court has found that SINGH's actions were the proximate cause of Plaintiff's accident.

While the Court accepts SINGH's testimony, that he is the owner of the van and that on the date of Plaintiff's accident he was working for WAREHOUSE making deliveries, at this time there is insufficient evidence for a ruling on the culpability of WAREHOUSE. Here WAREHOUSE was impleaded by TRANSIT as a Third- Party Defendant. While the parties stipulated to changing the caption to include only one action between Plaintiff and all Defendants, a proper motion by Plaintiff was not submitted. Accordingly, Plaintiff's motion as to partial summary judgments as to WAREHOUSE is denied with leave to refile.

Accordingly, it is hereby

ORDERED that the Defendant NEW YORK CITY TRANSIT AUTHORITY's motion for summary judgment is granted and the complaint and all cross-claims are dismissed; and it is further

ORDERED that the Plaintiff's cross-motion for partial summary judgment on the issue of liability is granted only as to Defendant SINGH; and it is further

ORDERED that all affirmative defenses as to Plaintiff's culpability are stricken; and it is further

ORDERED the caption be amended to reflect the discontinuance against Defendant NEW YORK CITY TRANSIT AUTHORITY and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Defendant NEW YORK CITY TRANSIT AUTHORITY shall file and serve a copy of this Order with notice of entry in accordance with electronic filing procedures; and it is further

ORDERED that since the NEW YORK CITY TRANSIT AUTHORITY is no longer a party that the action is transfer from Part 21 to another IAP or to the Motor Vehicle Part.

10/11/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

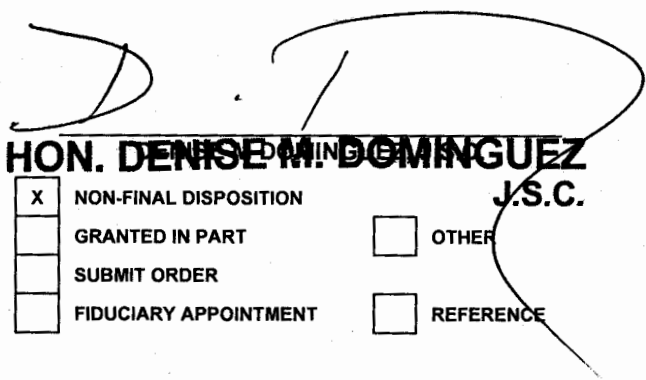
DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

  
HON. DENISE M. DOMINGUEZ  
J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE