

Torres v Lopez

2025 NY Slip Op 32757(U)

July 17, 2025

Supreme Court, New York County

Docket Number: Index No. 154854/2022

Judge: Richard Tsai

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

PRESENT: HON. RICHARD TSAI PART 21

Justice

-----X

ANTHONY TORRES,

Plaintiff,

- v -

JUSTIN TAVERAS LOPEZ and THE NEW YORK CITY
TRANSIT AUTHORITY,

Defendants.

-----X

INDEX NO. 154854/2022

MOTION DATE 04/28/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 108-126 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, it is **ORDERED** that plaintiff's motion for summary judgment is **GRANTED** as follows:

- (1) plaintiff is granted partial summary judgment in his favor as to liability against defendants, who are jointly and severally liable; and
- (2) the first affirmative defense of plaintiff's culpable conduct is dismissed.

Plaintiff has established that, on February 8, 2020, at about 8:50 p.m., he was walking westerly towards 7th Avenue in a crosswalk that runs parallel to 57th Street and across the Avenue of the Americas (Sixth Avenue), with a green traffic light and the pedestrian walk signal in his favor (exhibit A in support of motion [NYSCEF Doc. No. 111], affidavit of plaintiff ¶¶ 1-6; exhibit B in support of motion [NYSCEF Doc. No. 112], certified police accident report; exhibit C in support of motion [NYSCEF Doc. No. 113], plaintiff's deposition at 54, lines 12-16; at 57, lines 9-10; at 58, lines 13-16; exhibit F in support of motion [NYSCEF Doc. No. 116], statutory hearing at 15, lines 5-6; at 15, line 24 through 16, line 2; at 17, lines 13-17; at 17, line 21 through 18, line 2; at 18, line 24 through 19, line 1).

According to plaintiff, he saw a bus stopped at the intersection with a left turn signal, and he assumed the bus had seen him and was waiting for him to cross (plaintiff's deposition at 72, lines 6-12). Plaintiff testified that he was looking straight ahead as he walked westward across Sixth Avenue (statutory hearing at 30, lines 2-6). Meanwhile, the bus turned left into the crosswalk and struck plaintiff from behind, injuring him (statutory hearing at 20, lines 11-23). According to plaintiff, when he heard the bus, he turned to the left to look, and he was hit as he was swiveling his body (plaintiff's deposition at 61, lines 16-18; at 72, lines 18-19; at 73, lines 11-12). The left

side of his body took the brunt of the contact (*id.* at 73, lines 13-15). Plaintiff testified that the impact lifted him off his feet, and he landed on his back in pain (plaintiff's deposition at 60, lines 9-14). Plaintiff was taken to New York Presbyterian hospital, where he had complaints about his leg, hip, arm, hand, neck, and back (*id.* at 64, lines 2-9).

Defendants admitted that the bus, which bore New York license plate AT9516, was owned by New York City Transit Authority (NYCTA) (exhibit H in support of motion [NYSCEF Doc. No. 118], answer ¶ 2). Defendants also admitted that defendant Justin Taveras Lopez operated the subject bus, "within the scope of his employment and with the permission of" NYCTA (*id.*).

Based on plaintiff's affidavit, and testimony from plaintiff's statutory hearing and plaintiff's deposition, plaintiff made a prima facie showing that the "defendant driver failed to exercise due care in accordance with Vehicle and Traffic Law § 1146(a) and failed to yield the right of way to plaintiff in accordance with Vehicle and Traffic Law § 1111(a)(1)" (*Miranda v Century Waste Services, LLC*, 210 AD3d 590, 591 [1st Dept 2022]; *see also Hines v New York City Tr. Auth.*, 112 AD3d 528, 529 [1st Dept 2013] ["Plaintiff established entitlement to judgment on liability as a matter of law by submitting evidence demonstrating that she was crossing the street, within the crosswalk, with a 'walk' sign in her favor, when defendants' vehicle, which was making a left turn, struck her"]).

As the NYCTA is the admitted owner of the vehicle operated by defendant Lopez with the NYCTA's permission, plaintiff met his prima facie burden that the NYCTA is vicariously liable for Allen's negligence under Vehicle and Traffic Law § 388 (*see Murdza v Zimmerman*, 99 NY2d 375, 379 [2003]). As the incident occurred within the scope of Lopez's employment, NYCTA is also vicariously liable for Lopez's negligence under the doctrine of respondeat superior (*Riviello v Waldron*, 47 NY2d 297, 302 [1979]; *Ryga v New York City Tr. Auth.*, 17 AD3d 561, 562 [2d Dept 2005]).

Likewise, plaintiff has made a prima facie showing that the affirmative defense of culpable conduct should be dismissed, as plaintiff established "that he was not at fault in the happening of the accident, since he testified that the collision occurred suddenly and that, before crossing the roadway, he observed the pedestrian signal in his favor while also looking for oncoming traffic" (*Farooq v Uber USA, LLC*, 235 AD3d 846, 848 [2d Dept 2025]; *see also Shin v Ljulja*, 219 AD3d 1238, 1238 [1st Dept 2023] ["A plaintiff, who is struck by a vehicle that approaches from behind and to the right after turning left into the crosswalk where it struck plaintiff, may not be held comparatively negligent based on a theory that she could have seen and avoided the vehicle through the exercise of ordinary care"]).

In opposition, defendants have failed to raise a triable issue of fact as to Lopez's negligence, or as to the lack of plaintiff's comparative negligence. Indeed, Lopez testified that he never saw plaintiff before or during the accident (exhibit D in support of

motion [NYSCEF Doc. No. 114], deposition of Lopez at 51, line 14 through 52, line 5; at 76, line 7 through 77, line 16).

Defendants, however, argue that this motion should be denied because: 1) the motion is “premised on violations of Vehicle and Traffic Law §1111(a)(1), §1146(a) and §1163(a), as well as §4-03(a)(1)(i) of the New York Traffic Rules and Regulation” which were never “enunciate[d]” in the notice of claim or bill of particulars (affirmation in opposition to motion [NYSCEF Doc. No. 123] ¶ 9); and 2) that there is a material issue of fact as to whether plaintiff was “startled by the bus behind him” and “[a]s a result, Plaintiff turned into the oncoming bus” (*id.* ¶ 21).

Defendants’ first argument is without merit. Plaintiff served a supplemental bill of particulars on October 31, 2023 alleging those very violations (see supplemental bill of particulars [NYSCEF Doc. No. 40]). In any event, even if plaintiff had not served this very bill of particulars, plaintiff alleged in his bill of particulars that Lopez “failed to yield the right of way to pedestrian plaintiff” (exhibit I in support of motion [NYSCEF Doc. No. 119], bill of particulars ¶ 10). Mere reference to the specific statutory sections violated—even if done for the first time on this motion—would have “merely amplified and elaborated upon the theory already set forth in the original bill of particulars and raised no new theory of liability” (*Scherrer v Time Equities, Inc.*, 27 AD3d 208, 209 [1st Dept 2006]).

The notice of claim alleges that plaintiff “was crossing the intersection in a crosswalk with a green light to his favor, when suddenly, and without warning, the bus driver . . . made a left-hand turn . . . and struck and knocked down pedestrian plaintiff” (exhibit E in support of motion [NYSCEF Doc. No. 115], notice of claim). Contrary to defendants’ argument, plaintiff was not required to set forth “*in haec verba*” the statutes allegedly violated in the notice of claim (*Bartley v County of Orange*, 111 AD3d 772, 774 [2d Dept 2013] [plaintiffs’ notices of claim were sufficient to apprise the County of a cause of action premised upon a violation of Navigation Law § 181] [internal quotation marks and citation omitted]).

Defendants’ theory that plaintiff was “startled by the bus behind him” and “[a]s a result, Plaintiff turned into the oncoming bus” (*id.* ¶ 21) is “purely speculative” (*Nova Soto-Bay v Prunty*, 115 AD3d 586, 587 [1st Dept 2014]). Defendants seem to base this theory, at least in part, on a discrepancy between: (1) the affidavit that plaintiff submitted in support of his first motion for summary judgment—which was withdrawn “without prejudice” (stipulation of withdrawal of plaintiff’s prior motion for summary judgment [NYSCEF Doc. No. 41]) and (2) the affidavit submitted as exhibit A in support of this motion.

As defendants note, the only discrepancy between the two affidavits is the language used in paragraph 5 of each affidavit. The table below puts the two paragraphs side-by-side for ease of comparison:

Affidavit submitted on prior motion (defendants' Exhibit A in opposition [NYSCEF Doc. No. 124])	Affidavit on this motion (plaintiff's Exhibit A in support of motion [NYSCEF Doc. No. 111])
"The defendant made a left turn into the intersection from behind me, without giving me any warning and as such I did not see him until immediately before his vehicle collided into me when I heard the bus and turned"	"The defendant made a left turn into the intersection from behind me, without giving me any warning and as such I did not see him until immediately before his vehicle collided into me"

The words "when I heard the bus and turned" were omitted from plaintiff's affidavit on this motion. As defendant points out, the discrepancy between the two affidavits comes down to whether plaintiff heard the bus and turned immediately the accident. However, this discrepancy does not raise a material issue of fact. No reasonable inference can be drawn that plaintiff's turn immediately before contact was a substantial factor in causing the accident, given plaintiff's deposition testimony about the moments right before the accident:

"Q. At some point did you feel some sort of an impact?

A. Yes.

Q. Where did you feel this impact?

A. I felt it behind the left side of me.

Q. You say behind left side. Was it your body that was hit first, your backpack hit first? What was it?

A. Kind of my left side where my shoulder arm. I kind of heard something and out of the corner of my eye I saw something at the same time that I heard it. I kind of swiveled or turned a little bit and that's when I got hit.

Q. When you say you turned and swiveled did you turn all the way around, turn halfway? How did you turn?

A. No. I didn't get enough time to do any of that. As I heard I tried to turn and I got hit"

(plaintiff's deposition at 59, line 10 through 60, line 3).

As plaintiff's testimony illustrates, the moment between when he turned and when the bus struck him was so brief, that it is "purely speculative" to argue that such

turning played any role in causing the accident (*Nova Soto-Bay*, 115 AD3d at 587). Defendants submit no testimony or other evidence that plaintiff took a step in any direction as he turned, that would have brought plaintiff into the path of the bus before turning.

Therefore, plaintiff is granted partial summary judgment in his favor on the issue of liability against defendants, and defendants' first affirmative defense of culpable conduct is dismissed.

To be clear, the court's determination on this motion does not include the issue of whether plaintiff suffered a serious injury within the meaning of Insurance Law § 5102 (d), "which is a threshold matter separate from the issue of fault" (*Reid v Brown*, 308 AD2d 331, 332 [1st Dept 2003]).

This constitutes the decision and order of the court.



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7/17/2025

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE