

Mejia v U.T.F. Trucking, Inc.

2025 NY Slip Op 32944(U)

July 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 515793/2020

Judge: Anne J. Swern

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 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 22nd day of July 2025.

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

DANILO PAZ MEJIA,

Plaintiff(s),

-against-

U.T.F. TRUCKING, INC., FRESH DIRECT, LLC, JEROME BROWNE, FEDEX GROUND PACKAGE SYSTEM, INC., J GIBSON TRUCKING CORP., and ROBERT TATIS,

Defendant(s).

DECISION & ORDER

Index No.: 515793/2020

Calendar No.: 38 & 39

Motion Seq.: 5 & 6

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

	Papers Numbered
001 Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 118-143).....	1, 2
Affirmation and Exhibits in Opposition (NYSCEF 150-179).....	3
Reply Affirmation and Exhibits (NYSCEF 179-182).....	4
002 Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 154-169).....	5, 6
Affirmation and Exhibits in Opposition (NYSCEF 172-178).....	7
Reply Affirmation and Exhibits (NYSCEF 183).....	8

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

This is an action for personal injuries sustained by plaintiff while crossing Atlantic Avenue in Brooklyn, New York. Plaintiff started to cross the street in front of Botanica Garden Center on Atlantic Avenue in Brooklyn, New York. There were four lanes of traffic – two in each direction on Atlantic Avenue. At the time of the accident, Browne was operating a Fresh Direct truck. He testified that he turned onto Atlantic Avenue from Third Avenue when he

observed a FedEx truck double parked in the right lane of traffic (on the opposite side of the street from Botanica Garden Center).

Plaintiff testified that he had crossed three lanes of traffic (crossing over the double yellow lines) and when he attempted to cross/enter the fourth lane of traffic where the FedEx truck was double parked, he was struck by the Fresh Direct. However, Browne testified that plaintiff emerged from between two stopped vehicles and ran in front of his vehicle. Neither plaintiff nor Browne saw each other before the accident.

All defendants have now moved for summary judgment on the grounds that they were not the proximate cause of the accident. Defendants Browne and Fresh Direct have moved in the alternative that since plaintiff violated Vehicle & Traffic Law § 1152 [a] by crossing the street outside of the crosswalk, he was the sole proximate cause of the accident.

Summary Judgment

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]).

MS 005 Motion for Summary Judgment by FedEx Ground Package System, Inc., J. Gibson Trucking Corp. and Robert Tatis ("FedEx Defendants")

"Although the issue of proximate cause is generally one for the finder of fact, liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes" (*Castillo v Amjack Leasing Corp.*, 84 AD3d 1297, 1298 [2d Dept 2011] and see *Derdiarian v Felix Contr. Corp.*, 51 NY2d 308, 315 [1980]). Under such circumstances, a defendant is entitled to summary judgment upon a showing that although there may have been some negligence on their part, it was not the proximate cause of the accident (see *Castillo v Amjack Leasing Corp.*, 84 AD3d 1298 [Despite allegations of negligent design of a parking lot, the sole proximate cause of the accident was the truck driver failing to look out when backing up a truck.]; *Peralta v Manzo*, 74 AD3d 1307 [2d Dept 2010] [A bus stopped in the roadway at a green light was not the proximate cause of the accident when a vehicle pulled out from behind the bus.]; and *Lee v. D. Daniels Contracting*,

Ltd., 113 AD3d 824 [2d Dept 2014] [A garbage truck blocking the right lane of traffic when the plaintiff's vehicle struck it was not the proximate cause of the accident.]).

Here, plaintiff was crossing from the opposite side of the street from where the FedEx truck was double parked in the right lane. The accident occurred as plaintiff was attempting to enter the right lane after crossing the double yellow line. Co-defendant Browne has not opposed the motion and did not testify that the FedEx truck impeded his ability to avoid striking the plaintiff. Therefore, as a matter of law, FedEx was not the proximate cause of plaintiff's accident (*Castillo v Amjack Leasing Corp.*, 84 AD3d1298 and *see Derdiarian v Felix Contr. Corp.*, 51 NY2d 315).

**MS 006 Motion for Summary Judgment by U.F.T. Trucking, Inc.,
Jerome Browne and Fresh Direct, Inc. ("Fresh Direct Defendants")**

The motion is denied because the Fresh Direct Defendants have not established that, as a matter of law, Browne that did not "operate his vehicle in a negligent manner or failed to see that which, through proper use of his senses, he should have seen," *i.e.*, plaintiff in the roadway (*cf. Pixtun-Suret v Gevinski*, 165 AD3d 715, 716 [2d Dept 2018]). Upon a motion for summary judgment, the question of whether plaintiff's violation of VTL § 1152 [a] was the sole proximate cause of the accident is a on a case-by-case basis under the facts presented (*Id.*; and see *Balliet v North Amityville Fire Dept.*, 133 AD3d 559, 560 [2d Dept 2015] ("*Under the circumstances presented here, [] defendants established their entitlement to judgment as a matter of law.*" [emphasis added])).

Where, as here, there is conflicting testimony between plaintiff and Browne, the motion must be denied. The credibility of Browne's testimony that plaintiff "ran in front of [his vehicle]," is a question of fact for the jury. (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175; *Cameron v City of Long Beach*, 297 AD2d 774).

The Court has considered Fresh Direct's remaining arguments and find same to be without merit or academic.

According, it is hereby

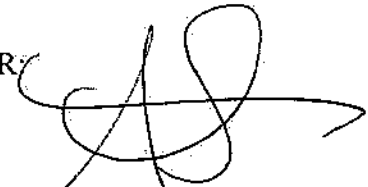
ORDERED that the motion for summary judgment by defendants, FEDEX GROUND PACKAGE SYSTEM, INC., J GIBSON TRUCKING CORP., and ROBERT TATIS, is granted in its entirety (MS 005), and it is further

ORDERED that this action is dismissed in its entirety, together with all cross-claims, as against defendants, FEDEX GROUND PACKAGE SYSTEM, INC., J GIBSON TRUCKING CORP., and ROBERT TATIS, and the Clerk shall enter judgment accordingly (MS 005), and it is further

ORDERED that the motion for summary judgment by defendants, U.T.F. TRUCKING, INC., FRESH DIRECT, LLC, JEROME BROWNE, is denied in its entirety (MS 006).

This constitutes the decision and order of the Court.

ENTER



Hon. Ange J. Swern, J.S.C.

Dated: 7/22/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____