

**Benitez v City of New York**

2025 NY Slip Op 33167(U)

August 22, 2025

Supreme Court, New York County

Docket Number: Index No. 151661/2015

Judge: Richard Tsai

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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. RICHARD TSAI PART 21**

*Justice*

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SIGFRIDO BENITEZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE METROPOLITAN  
TRANSPORTATION AUTHORITY, THE NEW YORK CITY  
TRANSIT AUTHORITY, MANHATTAN AND BRONX  
SURFACE TRANSIT OPERATING AUTHORITY, MTA BUS  
COMPANY, ABNER PROPERTIES COMPANY, ASHRAF  
CORPORATION, NEWARK KNIGHT FRANK GLOBAL  
MANAGEMENT SERVICES, LLC, ROSEN GROUP  
PROPERTIES LLC, THE ROSEN GROUP INC., THE  
ROSEN GROUP, LLC, ROCKLEDGE SCAFFOLDING,  
ROCKLEDGE SCAFFOLDING CORP., CS BRIDGE CORP.,  
OLD TIME SCAFFOLDING, INC., and OLD TIME  
SCAFFOLDING CORP.,

Defendants.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 006) 321-359  
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is **ORDERED** that the motion for summary judgment  
by defendants Metropolitan Transportation Authority, the New York City Transit  
Authority, Manhattan and Bronx Surface Transit Operating Authority, and the MTA Bus  
Company (collectively, the Transit Defendants) is **DENIED**.

On December 30, 2013 at approximately 8:30 p.m., plaintiff Sigfrido Benitez was  
injured while alighting from an M7 bus at the corner of West 14th Street and 7th  
Avenue. According to plaintiff, as he was about to exit the rear doors, he saw a puddle  
on the street and decided to jump over the puddle, but his head hit sidewalk scaffolding  
during the jump.

The Transit Defendants now move for summary judgment dismissing the  
complaint and all cross-claims as against them, on the grounds that they had provided  
plaintiff with a reasonably safe path to alight from the bus, and that it was the sole  
actions of the plaintiff which caused the accident. Plaintiff opposes motion.

## BACKGROUND

At his statutory hearing, plaintiff testified that, on December 30, 2013, he boarded an M7 bus, intending to get off at 14th Street and Seventh Avenue (see exhibit I in support of motion, hearing tr at 13, lines 13-20; at 14, line 24 through 15, line 1; at 16, lines 4-6 [NYSCEF Doc. No. 334]). When the bus arrived at 14th Street and Seventh Avenue, plaintiff went to “the first door to the back [the rear door]. Um, cause they asked everybody to use the back doors” (*id.* at 18, line 22 through 19, line 11). Plaintiff stated that the rear door was “roughly about a foot” from the curb (*id.* at 20, lines 1-4).

According to plaintiff,

“the door opened and I was looking down to see the area cause I thought it was near the sidewalk but it was like a foot away. And there was a puddle so my—my cause [sic] was not to fall into the puddle so I went to grab the handle and the handle slipped and I went flying into the pole of the scaffolding that was there” (*id.* at 21, lines 3-9).

Plaintiff later testified, “So I started to jump onto the sidewalk”; “Not fall into the puddle” (*id.* at 22, lines 21-23). He stated,

“So when I jumped there was a scaffolding there and I ran, uh, when I was trying to jump to the—to the edge of the sidewalk I was looking down. And, um, I was trying to grab on to the handrail at the same I was moving real quick and, uh, it wasn’t a sturdy handle and went flying. I mean accelerated the—the round handle and went flying into the scaffolding. . . And hit my head” (*id.* at 22, line 25 through 23, line 6).

When asked if he could have avoided the pole, plaintiff responded, “Um, I didn’t notice it. I was concerned about taking, uh, a safe step onto the sidewalk so my face was looking down and not looking at the scaffold” (*id.* at 38, lines 5-7).

At his continued deposition on February 27, 2019, plaintiff testified, “when I opened the door and looked down there was a puddle and snow which caused me to jump over to try to get onto the sidewalk is when I hit the scaffolding” (see exhibit K in support of mot, plaintiff’s continued EBT at 215, lines 9-11 [NYSCEF Doc. No. 336]). According to plaintiff, “I hit my head into the scaffolding that was standing right before the open doors” (*id.* at 241, lines 4-5). When asked, “Did you ask the bus operator to close up the doors and move to another location?”, plaintiff replied, “I never thought about it, no” (*id.* at 221 line 25 through 222, line 3). Plaintiff did testify that some passengers appeared as if they were exiting through the front door of the bus (*id.* at 211, lines 21-25).

## DISCUSSION

“To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party” (*Nellenback v Madison County*, —NY3d—2025 NY Slip Op 02263 [2025] [internal citations omitted]).

The Transit Defendants argue that they provided plaintiff with a reasonably safe path to alight the bus, in that plaintiff could have exited through the front doors, or had chosen not to jump towards the scaffolding without looking where he was jumping (affirmation of Transit Defendants’ counsel in support of mot ¶¶ 16-17 [NYSCEF Doc. No. 324]). The Transit Defendants therefore contend “it was the sole actions of plaintiff which caused the accident” (*id.* ¶ 16).

In opposition, plaintiff argues that defendants did not make out their prima facie burden, and in any event, there are questions of fact as to whether the Transit Defendants provided plaintiff with a safe path to exit the bus (see affirmation of plaintiff’s counsel in opposition to mot ¶ 18 [NYSCEF Doc. No. 346]). Plaintiff submits an affirmation from Carl Berkowitz, a transportation engineering expert, who opines that the bus driver had violated 13 standards of care (see exhibit N, Berkowitz aff ¶ 28 [NYSCEF Doc. No. 347]). Lastly, plaintiff argues that the Transit Defendants’ argument that plaintiff should have used the front door instead of exiting through the rear door raise issues of comparative fault (affirmation of plaintiff’s counsel in opposition ¶ 34).

In reply, the Transit Defendants contend that plaintiff never asserted that he was unable to step over the 12-inch span between the bus and sidewalk (reply affirmation of Transit Defendants’ counsel ¶ 6 [NYSCEF Doc. No. 359]).

“A common carrier owes a duty to its passengers to stop at a place where they may safely disembark and leave the area. Liability rests upon a finding that the placement of the bus dictates that the passenger, in order to board or exit the bus, must negotiate a dangerous or defective path. Whether a common carrier has breached its duty in this regard is generally a question of fact to be determined by the jury” (*Malawer v New York City Tr. Auth.*, 18 AD3d 293, 294–95 [1st Dept 2005], *affd* 6 NY3d 800 [2006] [internal citations, quotation marks, and emendation omitted]).

The Transit Defendants did not meet their prima facie burden of demonstrating that plaintiff had been provided a safe place to alight from the bus. First, to the extent that the Transit Defendants argue that it was safe to exit from through the rear door of the bus, they submit no evidence that the area around the rear exit door was safe, especially given plaintiff’s unrefuted testimony that he saw a puddle of water and snow.

Second, assuming, for the sake of argument, that plaintiff ought to have used the front door of the bus to exit, the Transit Defendants submit no evidence that it was safe to alight from the front door of the bus. Aside from plaintiff’s testimony that he observed some passengers exit through the front door, there is no testimony about the conditions of the area around the front door of the bus. Without evidence as to the condition of the area around the front door of the bus, the fact that others exited the front door does not establish that the area around the front door was, as a matter of law, safe (*see Defay v City of New York*, 174 AD3d 406, 407 [1st Dept 2019] [“The fact that approximately 10 other passengers safely boarded the bus at the same time that plaintiff fell in the hole while attempting to board does not entitle NYCTA to summary judgment”]).

The Transit Defendants’ argument that plaintiff’s actions were the sole cause of the accident is unpersuasive.

“Typically, the question of whether a particular act of negligence is a substantial cause of the plaintiff’s injuries is one to be made by the factfinder, as such a determination turns upon questions of foreseeability and what is foreseeable and what is normal may be the subject of varying inferences.

When a question of proximate cause involves an intervening act, liability turns upon whether the intervening act is a *normal or foreseeable consequence* of the situation created by the defendant’s negligence” (*Hain v Jamison*, 28 NY3d 524, 529 [2016] [internal quotation marks and citations omitted]).

Here, viewing the evidence in the light most favorable to plaintiff as the non-movant, there are triable issues of fact as to whether plaintiff’s conduct in jumping over the puddle was a normal and foreseeable consequence of the fact that the rear exit door of the bus was next to a puddle. The court agrees with plaintiff’s counsel that the act of jumping over the puddle without looking at the scaffolding would raise an issue of plaintiff’s comparative negligence, rather than bar plaintiff from recovery.

Therefore, the Transit Defendants’ motion for summary judgment is denied.



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<u>8/22/2025</u>				<u>RICHARD TSAI, J.S.C.</u>
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE