

**Benitez v Wright**

2025 NY Slip Op 33357(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 160957/2021

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

-----X

MICHAEL BENITEZ,

Plaintiff,

- v -

VINCENT M. WRIGHT and NEW YORK CITY TRANSIT AUTHORITY,

Defendants.

-----X

INDEX NO. 160957/2021

MOTION DATE 09/20/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 17, 45-60, 62-65 were read on this motion to/for JUDGMENT - SUMMARY

In this action involving a motor vehicle collision, plaintiff Michael Benitez now moves for partial summary judgment in his favor on the issue of liability against defendants. Plaintiff also seeks summary judgment dismissing all claims asserted against him as a defendant in a related action, Tammi Phoenix v New York City Transit Authority, 150445/2022, which had been joined for trial with this action (see NYSCEF Doc. No. 17).<sup>1</sup> Defendants oppose the motion.

BACKGROUND

According to the complaint, on February 24, 2021, plaintiff was operating a vehicle bearing New York license plate number MAB115, which was struck by a bus bearing New York license plate number AU1220, operated by defendant Vincent Wright, on 7th Avenue, near the intersection with 117th Street (see Exhibit D in support of mot, complaint ¶¶ 17-19, 22 [NYSCEF Doc. No. 50]).

In their answer, defendants New York City Transit Authority (NYCTA) and Vincent Wright admit that the NYCTA owned the subject bus and that it "was operated by defendant VINCENT M. WRIGHT with the consent of defendant [NYCTA]" (exhibit D [NYSCEF Doc. No. 50] answer ¶ 3). The Transit Defendants deny liability for the happening accident and assert several affirmative defenses, including that the accident was caused by Benitez's "culpable conduct" (id. ¶ 7) and that Wright was "confronted by an emergency not of his/her own creation" (id. ¶ 9).

1 On September 25, 2024, Phoenix e-filed a stipulation of discontinuance of her claims as against Benitez only (see NYSCEF Doc No. 30, stipulation of discontinuance in Phoenix v New York City Transit Authority, Sup Ct, NY County, index No. 150445/2022).

It is undisputed that, on February 24, 2021, at around 4:00 p.m., both Benitez and Wright were operating their respective vehicles in the uptown lanes of 7<sup>th</sup> Avenue, near the intersection with 117<sup>th</sup> Street. Video footage of the front facing camera of Wright's bus also establishes that, at around this time a swarm of motorcycles and ATVs were also passing through this area:



(exhibit L in support of motion in support of motion [NYSCEF Doc. No. 58], bus video footage at 3:58:58 p.m. [cropped and adjusted for size]).<sup>2</sup>

At the 3:59:01 timestamp, Wright's bus, which was previously stopped, begins to proceed into the intersection, but then comes to a stop before the north crosswalk at 3:59:17 p.m., as a biker stopped directly in front of the bus:



<sup>2</sup> The still frames of the video in this decision (used for purposes of illustration) were snipped from the video while playback was paused.

(*id.* at 3:59:17 [cropped and adjusted for size]). At this time, and in the still-frame above, Benitez’s Black Chevrolet Tahoe that was previously double-parked on the right side, can be seen turning left and slowly attempting to angle into the left lane of travel. Several seconds later, Benitez’s vehicle has angled out further and has edged into the left lane of travel:



(*id.* at 3:59:23 [cropped and adjusted for size]). By timestamp, 3:59:36 p.m., Benitez’s vehicle has moved further into the left lane, but has stopped, while Wright is continuing to move his bus forward, and attempting to move over into the left lane:



(id. at 3:59:36 p.m. [cropped and adjusted for size]).

By timestamp 3:59:40 p.m., the forward-facing camera of the bus appears to be less than one-car length from Benitez’s Tahoe, as Wright appears to be attempting to move into the left shoulder lane—separated from the left lane of travel by two double-yellow lines—and maneuver around Benitez’s vehicle:



(id. at 3:59:40 p.m. [cropped and adjusted for size]). Roughly three seconds later, it appears that the bus is about to go around Benitez’s Tahoe, with just the front left portion of the Tahoe appearing in the bottom right corner of the forward-facing camera:



(id. at 3:59:40 p.m. [cropped and adjusted for size]).

It is roughly around this time that Benitez asserts that “I was sideswiped by the tail end of the bus, that rubbed in the front of me -- right in front of my car” (plaintiff’s exhibit H [NYSCEF Doc. No. 54], Benitez EBT at 37, line 21 through 38, line 5). According to Benitez, the accident occurred because “the bus must have thought he had enough room to clear” (*id.*).

According to Wright, just before the accident, he was “inch[ing] along” at the “[s]peed of a turtle” and traveling “probably two miles an hour, if that” (exhibit K in support of mot [NYSCEF Doc. No. 57], Wright EBT at 33, line 20 through 34, line 19). Wright stated that, before the accident, he “noticed only that there was a vehicle coming in, angling into my lane and I was going around him” (*id.* at 41, lines 11-17). Wright stated that he first became aware of the accident when “I heard something and I looked in my mirror” and that he saw Benitez’s “front vehicle touching me, touching my right rear” (*id.* at 45, lines 5-22).

Wright further testified that after the accident, his supervisor came to the scene, and that he informed his supervisor that the accident happened because Benitez “pulled out from a double-parked area and touched the bus,” and that Benitez’s vehicle was moving at the time of the accident (*id.* at 49, line 17 through 50, line 17). However, after watching the video of the accident multiple times from different angles at his deposition, Wright stated that it appeared to him that Benitez’s Tahoe was not moving at the time of the accident (*id.* at 82, line 13 through 96, line 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]).

Here, Benitez has established prima facie entitlement to summary judgment by putting forth his testimony and video of the accident establishing that his stopped car was struck by the bus as the bus attempted to move around him. The evidence was sufficient to establish violations of both Vehicle and Traffic Law §§ 1122 and 1129.

“Vehicle and Traffic Law § 1129(a) is violated whenever a driver follows another too closely, and there is no requirement that there be a collision, rear-end or otherwise, between the vehicles. . . . Indeed, a driver's failure to ensure that there is sufficient clearance to pass another vehicle may implicate both Vehicle and Traffic Law §§ 1122 and 1129” (*Williams v City of New York*, 240 AD2d 734, 736 [2d Dept 1997]; see *Hogan v Townsend*, 228 AD3d 740, 741 [2d Dept 2024] [while plaintiff’s vehicle was stopped to

parallel park, defendant attempted to drive around the plaintiff's vehicle and misjudged his clearance]).

In opposition, defendants contend that there are triable issues of fact precluding summary judgment as to both Wright's and Benitez's negligence because Benitez "improperly moving on a diagonal across more than one lane, forcing all moving traffic, including the bus, to maneuver around him" (affirmation of defendants' counsel in opposition [NYSCEF Doc. No. 62] ¶ 20).

However, by angling his stopped car in the manner that he did, wherein a small portion protruded into the left lane of travel, Benitez's stopped vehicle "merely furnished the occasion . . . for the occurrence of the event rather than one of its causes" (*Dunlap v City of New York*, 186 AD2d 782, 783 [2d Dept 1992], quoting *Sheehan v City of New York*, 40 NY2d 496, 503 [1976]). Wright alone made the choice to proceed under these circumstances, and Wright alone took the risk of misjudging the distance.

The court further rejects defendants' argument that Benitez's car being double-parked prior to the accident could be a basis for finding Benitez at fault for the happening of the accident. At the time of the accident, Benitez's vehicle was no longer double-parked, and the facts underlying *Murray Davis v Rapid Armored Corp.*, (300 AD2d 96 [1st Dept 2002]) – cited by the Transit Defendants – are fundamentally different than those in this case.

The court also rejects defendants' argument that the emergency doctrine is applicable to the instant case. The emergency doctrine

"recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make 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, provided the actor has not created the emergency" (*Caristo v Sanzone*, 96 NY2d 172, 174 [2001] [internal citations and quotation marks omitted]).

Here, Wright was not faced with "with a sudden and unexpected circumstance" or one that would cause him to "be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct" (*id.*) Rather, he was stopped at the intersection when a swarm of motorcycles and ATVs began passing through the intersection. Wright then chose to attempt to slowly navigate through the intersection and up 7<sup>th</sup> Avenue notwithstanding the presence of the motorcycles and ATVs, as well as having to maneuver around Benitez's vehicle. The emergency doctrine does not apply "where he or she encounters 'a known, foreseeable hazard which he in fact observed enter his path prior to the accident' or where he or she 'fails to be aware of the potential hazards presented by traffic conditions, including stoppages

caused by accidents up ahead” (*Freder v Costello Indus., Inc.*, 162 AD3d 984, 986 [2d Dept 2018] [citation omitted]).

Thus, the branch of plaintiff’s motion for summary judgment in his favor as to liability against defendants is granted.

To be clear, however, the determination of defendants’ fault as a matter of law on this motion does not include the issue of whether Benitez 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]).

It is undisputed that Benitez was wearing a seatbelt at the time of the accident. Therefore, Benitez is entitled to summary judgment dismissing the fourth affirmative defense.

The branch of plaintiff’s motion for summary judgment dismissing the complaint as against him in *Phoenix* is denied. As discussed above, the plaintiff’s claims in *Phoenix* were discontinued as to Benitez, so such relief would be academic.<sup>3</sup>

### CONCLUSION

Accordingly, it is hereby **ORDERED** that plaintiff’s motion for partial summary judgment is **GRANTED IN PART TO THE EXTENT THAT** plaintiff Michael Benitez is awarded partial summary judgment in his favor on the issue of liability against defendants, who are jointly and severally liable in this action and it is further

**ORDERED** that the first, third and fourth affirmative defenses of defendants’ answer are stricken; and it is further

**ORDERED** that plaintiff’s motion is otherwise denied; and it is further

**ORDERED** that, within 60 days after entry of this decision and order, plaintiff’s counsel is directed to retrieve the flash drives containing video footage from IAS Part 21, 80 Centre Street Room 280, and plaintiff’s counsel and defendants’ counsel are directed to preserve the video footage intact that each had submitted to the court, pending the outcome of any appeal of this decision and order, or if no appeal is taken,

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<sup>3</sup> For the future, plaintiff’s counsel should take note that, where cases are joined for trial, a separate motion must be brought in each action for which relief is sought, and the fee must be paid for each motion.

until after the time to appeal from this decision and order has expired.<sup>4</sup>



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<u>9/8/2025</u>			<u>RICHARD TSAI, J.S.C.</u>
<b>DATE</b>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE

<sup>4</sup> If the video footage is not retrieved within 60 days after entry of this decision, court staff may then discard any unretrieved video footage.