

**Feliz v Muniz**

2025 NY Slip Op 33362(U)

September 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 512556/2019

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3<sup>rd</sup> day of September, 2025.

HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
FERNANDO FELIZ,

Index No.: 512556/2019

Plaintiff,

-against-

**DECISION & ORDER**

JOEL MUNIZ, THE CITY OF NEW YORK,  
METROPOLITAN TRANSPORTATION AUTHORITY,  
NEW YORK CITY TRANSIT AUTHORITY, MABSTOA,  
and MTA BUS COMPANY

(Mot. Seq. No. 5)

Defendants.

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|---|--------------------------|
| <u>The following e-filed papers read herein:</u>      | <u>NYSCEF Doc. Nos.:</u> |
| Notice of Motion/Affirmation in Support/Exhibits..... | 90 - 95                  |
| Affirmation in Opposition/Exhibits.....               | 99 - 104                 |
| Affidavit or Affirmation in Reply.....                | 107                      |

In this action Fernando Feliz (“Plaintiff”) moves (Motion Seq. 5) for summary judgment on the issue of liability and to strike Joel Muniz (“Muniz”) and New York City Transit Authority (“NYCTA”) (Collectively “Defendants”) first, third, and fourth affirmative defenses. Defendants have opposed the motion.

Plaintiff commenced this action alleging that he sustained personal injuries as a result of a motor vehicle accident that occurred on June 25, 2018. At the time of the accident, Plaintiff was double-parked on a two-lane road dropping passengers off at a hospital. Plaintiff claims he was struck from behind by a bus owned by NYCTA and operated by driver Muniz. Defendants dispute that Plaintiff was in his vehicle at the time of the accident.

In support of his motion, Plaintiff contends that his vehicle was parked when it was struck from behind by Defendants’ bus. Plaintiff asserts that the Defendant Muniz, at his deposition,

acknowledged seeing Plaintiff's fully stopped vehicle 50 to 100 feet ahead before the accident. Plaintiff argues that Defendant Muniz carelessly misjudged the space between his bus and Plaintiff's vehicle when passing from behind, causing the collision. Therefore, according to Plaintiff, Defendant Muniz violated Vehicle and Traffic Law ("VTL") §§ 388 (vehicle owners are liable for negligent use of their vehicles), 1163(a) (no driver shall turn without ensuring it is safe to do so), 1122(a) (drivers overtaking vehicles shall pass on the left at a safe distance), 1128(a) (drivers shall not switch lanes until they can do safely), and 1180(a) (no driver shall drive at a speed greater than what is prudent). Plaintiff avers Defendant Muniz's violations of the VTL were the sole cause of the accident.

In further support of his motion, Plaintiff cites to *Hogan v Townsend* (228 AD3d 740 [2d Dept 2024]), in which a plaintiff's double-parked vehicle was struck by a truck driver who misjudged the space in attempting to get around the plaintiff's vehicle. In *Hogan*, the Second Department held that the defendant was at fault and that plaintiff driver was entitled to summary judgment. Noting the similarities between *Hogan* and the instant case, Plaintiff argues that this Court should grant him summary judgment. Plaintiff claims that violating a statutory duty of care and failing to see what is in plain view each constitute negligence as a matter of law. According to Plaintiff, Defendant Muniz is culpable of both derelictions here.

Moreover, Plaintiff argues that Defendants' affirmative defenses should be stricken. Plaintiff contends that Defendant's first affirmative defense, which asserts that whatever injuries and/or damages Plaintiff may have sustained were caused in whole or in part by Plaintiff's culpable conduct, is inapplicable because Plaintiff could not have been comparatively at fault. Plaintiff asserts that, at most, his double parking might have furnished the conditions for the accident but did not cause it. Further, Plaintiff argues Defendants' third affirmative defense that Defendant's employee was confronted by an emergency not of his own creation does not apply because Defendant Muniz was never confronted by any emergency when the accident occurred. Lastly, Plaintiff argues that Defendant's fourth affirmative defense, that Plaintiff was not wearing a seatbelt at the time of the alleged occurrence, should be stricken as it is contradicted by Plaintiff's testimony that he was wearing a seatbelt at the time of the accident.

In opposition, Defendants argue that the motion must be denied because there are issues of fact regarding the position in which Plaintiff's car was parked, which are relevant to the issue of liability. Defendants remind the Court that it is undisputed that Plaintiff was double parked.

Defendants contend that, rather than just being double-parked, Plaintiff's car was double-parked across from another double-parked vehicle on the other side of the road in violation of VTL § 1202 (a) (1) (f) (no person shall park alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic). Moreover, Defendants argue that the rear of Plaintiff's vehicle was sticking out into the road causing an obstruction. Defendants differentiate the instant matter from *Hogan* by noting that the plaintiff in that case was not double-parked in violation of VTL §1202 as is the case here. Defendants also highlight the fact that Plaintiff was parked in a "No Standing at Anytime" zone.

In addition, Defendants claim that Second Department caselaw support their contention that the location of Plaintiff's vehicle raises an issue of fact as to the proximate cause of the accident and the issue of liability. In *Wilson v Rojas* (63 AD3d 1048 [2d Dept 2009]), the Second Department held that there was a triable issue of fact regarding whether the plaintiff's rear-ended tractor trailer was protruding into the road or not and consequently, whether the tractor's placement contributed to the accident. Similarly, in *Gonzalez v Ceesay* (98 AD3d 1078 [2d Dept 2012]), the court found that there was an issue of fact as to whether the plaintiff's own negligence in violating 34 RCNY 4-08, by double parking, was the proximate cause of his accident. Defendants also cite to *Yavkina v New York City Police Dept.* (60 AD3d 669 [2d Dept 2009]), in which the Second Department held that "owners of improperly parked cars may be held liable...depending on the determinations by the trier of fact on the issues of foreseeability and proximate cause unique to the particular case."

Accordingly, Defendants urge that it should be up to the fact finder to determine whether Plaintiff's obstruction of traffic was the sole proximate cause of the accident, emphasizing the fact that Plaintiff's double-parked vehicle was illegally parked and obstructing traffic.

Defendants also claim that issues of fact exist as to whether the accident caused Plaintiff's injuries. Defendants assert that there can be no liability from a negligent act if there is no injury. Defendants dispute the Plaintiff's alleged injuries to the neck, shoulder, and lower back occurred as result of the accident. Defendants note that Plaintiff did not make any complaint or exhibit any other signs of injury after the accident. Defendants also argue that the minimal damage to the vehicles demonstrate that the accident was minor and could not have caused the severe injuries alleged by Plaintiff. Finally, Defendants contend a further issue of fact exists as to whether Plaintiff was in his vehicle at the time of the accident and if so, whether he was wearing a seatbelt. At his

deposition, Defendant Muniz testified that he saw people standing at Plaintiff's vehicle's rear passenger door just before the collision and upon making contact, heard a man scream "hey you hit my car" (NYSCEF Doc No. 95 ¶ 75). Defendant Muniz believes Plaintiff was not in his vehicle at the time of the accident, contrary to Plaintiff's testimony.

In reply, Plaintiff points out that Defendants' opposition papers were untimely filed and urges the Court to not consider them on this basis. The opposition papers were filed on April 24, 2025, when they should have been filed on April 23, 2025, according to the agreed upon briefing schedule.

Substantively, Plaintiff maintains that he met his prima facie burden and Defendants failed to raise an issue of fact since they did not (a) dispute that Defendant Muniz struck Plaintiff's parked vehicle from behind or (b) raise a non-negligent explanation excusing their conduct in causing the accident. Therefore, Plaintiff argues, he is entitled to summary judgment on the issue of liability. Plaintiff argues that under *Rodriguez v City of New York* (31 NY3d 312 [2018]), he has no obligation to demonstrate his freedom from comparative fault in order to obtain summary judgment.

Plaintiff further clarifies that his double-parking may have furnished the conditions for the accident; however, it could not have been the proximate cause. In support, Plaintiff cites to *Vazquez v Roldan* (86 AD3d 640 [2d Dept 2011]). In that case, the Second Department held that there was no issue of fact raised as to whether plaintiff's double-parking was the proximate cause of the accident, even assuming the plaintiff was parked "in violation of applicable regulations" (*Vazquez*, 86 AD3d at 640-641).

Plaintiff underscores that Defendant Muniz struck him from behind, failing to see what was there to be seen. That action, according to Plaintiff, was the proximate cause of the accident as a matter of law, regardless of whether Plaintiff's double parking furnished the conditions for it to occur. Regarding Defendants' argument about the minimal impact of the collision, Plaintiff asserts that this has nothing to do with the issue of liability. With respect to whether Defendant was in his vehicle at the time of the accident, Plaintiff notes that Defendant Muniz merely testified that it was his belief that Plaintiff was standing outside the car, not that he actually saw Plaintiff outside the vehicle. Further, Plaintiff highlights that this belief is not corroborated by the police report or any other evidence.

It is well-established that on a motion for summary judgment, the burden rests with the movant to demonstrate, through admissible evidence, that there are no triable issues of fact and that it is entitled to judgment as a matter of law (*see Englington Med., P.C. v Motor Vehicle Acc. Indem. Corp.*, 81 AD3d 223, 230 [2d Dept 2011]). Once the movant has met its initial burden, summary judgment will only be granted if the opposing fails to establish the existence of questions of fact (*see Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [internal citation omitted]). “A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant’s negligence was a proximate cause of the alleged injuries” (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034 [2d Dept 2018], citing *Rodriguez v City of New York*, 31 NY3d 312 [2018]). It is now well-settled that a plaintiff is no longer required to establish the “absence of his or her own comparative fault” to be entitled to summary judgment (*Rodriguez*, 31 NY3d at 324-325).

Here, Plaintiff established prima facie entitlement to summary judgment on liability since it is undisputed that Defendant Muniz saw Plaintiff’s stopped vehicle well before the accident, attempted to maneuver around it, misjudged the space he had to do so, and collided into it. Defendants’ bus contacted the rear left of Plaintiff’s vehicle, as confirmed by both Defendant Muniz and Plaintiff in their depositions. Photos of the accident show damage to Plaintiff’s left rear bumper. While Defendants characterize the contact as a “sideswipe” rather than a rear-end collision, it is undisputed that Defendants’ bus struck the rear of Plaintiff’s parked vehicle while passing. Defendants attempt to raise an issue of fact regarding whether the position of plaintiff’s vehicle was the proximate cause of the accident by pointing out that Plaintiff was double parked in violation of the VTL. This argument is unavailing since the Second Department has held, “even assuming that [the defendant’s] vehicle was double parked in violation of applicable regulations, no triable issue of fact was raised as to whether the location of the double-parked vehicle was a proximate cause of the accident” (*Vazquez*, 86 AD3d at 640-641). Similarly, here, that Plaintiff was double parked in violation of VTL does not in and of itself raise an issue of fact regarding the proximate cause of the accident. Nor does Defendant present a justifiable excuse for the collision. Defendants’ contention that Plaintiff’s car was protruding into the road does not suffice. Accordingly, the portion of Plaintiff’s motion seeking summary judgment on liability is granted.

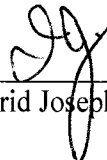
Now, the Court will address the portion of Plaintiff's motion seeking to strike Defendants' affirmative defenses. For the reasons stated above, Plaintiff's first affirmative defense of comparative negligence is stricken. Defendants' third affirmative defense is stricken because Defendant provided no evidence of any emergency. The Court declines to address Defendant's fourth affirmative defense premised on Plaintiff's failure to wear a seatbelt on this motion as it pertains to damages not liability. Accordingly, the portion of Plaintiff's motion striking Defendants' first, third, and fourth affirmative defenses is granted.

Therefore, it is hereby

ORDERED, that Plaintiff's motion for summary judgment on liability and seeking to strike Defendants' first, third and fourth affirmative defenses (Mot. Seq. No. 5) is granted in its entirety.

All other issues not addressed herein are without merit or moot.

This constitutes the decision and order of the Court.



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Hon. Ingrid Joseph, J.S.C.

**Hon. Ingrid Joseph  
Supreme Court Justice**