

**Vazquez v Randall**

2025 NY Slip Op 33679(U)

September 29, 2025

Supreme Court, New York County

Docket Number: Index No. 157946/2019

Judge: Ariel D. Chesler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X

MANUEL VAZQUEZ,

Plaintiff,

- v -

TOD RANDALL, THE CITY OF NEW YORK, NEW YORK
CITY DEPARTMENT OF SANITATION, PERSIO
AGRAMONTE, RIGOBERTO E. BARRIOS, FADJINE KONE

Defendant.

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INDEX NO. 157946/2019

MOTION DATE 03/18/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

In this proceeding, plaintiff seeks an Order pursuant to CPLR 3212 granting plaintiff summary judgment on the issue of liability.

Defendants, Persio Agramonte ("Agramonte") and Rigoberto E. Barrios ("Barrios") cross-move for an Order pursuant to CPLR 2221 and 3212, dismissing the Complaint and all cross-claims against them.

Defendant, Fadjine Kone ("Kone") cross-moves for an Order pursuant to CPLR 3212, dismissing plaintiff's Complaint and all cross-claims against said defendant.

FACTUAL BACKGROUND

This action arises out of personal injuries allegedly sustained by plaintiff as a result of a motor vehicle accident that occurred on November 13, 2019, at approximately 2:40 a.m. Plaintiff was a passenger in a vehicle stopped at a red light on the West 207th Street Bridge at its

intersection with 9th Avenue, in the County of New York, City and State of New York when his vehicle was hit in the rear. Plaintiff was a passenger in a motor vehicle owned by Boomf Management and operated by non-party Noel D. Ramirez. At the time of the accident, defendant Tod Randall (“Randall”) was operating a New York City Department of Sanitation garbage truck (“DSNY truck”) when his vehicle rear-ended the vehicle operated by defendant Agramonte causing Mr. Agramonte’s vehicle to collide with the vehicle operated by defendant Kone. Subsequently, as a result, the vehicle operated by defendant Kone collided with the vehicle plaintiff was a passenger in.

This action was commenced by the filing of the Summons and Complaint on or about August 14, 2019. Defendants Agramonte and Barrios filed their Answer on or about October 7, 2019. On or about October 28, 2019, defendant Kone filed an Answer. Plaintiff made a previous motion for summary judgment for liability against all parties on November 25, 2020 (*see* NYSCEF Docs. Nos. 49-51). In a decision dated June 22, 2021, Justice Sweeting granted the portion of plaintiff’s motion to the extent that the Court found plaintiff free from culpable conduct on the issue of liability (*see* NYSCEF Doc. No. 103). The motions were otherwise denied as premature, with leave to re-file at the completion of discovery (*id.*). On May 12, 2022, the Appellate Division upheld Justice Sweeting’s decision (*see* NYSCEF Doc. No. 132). The deposition of defendant Tod Randall and City expert witness Michael Graff have been held (*see* NYSCEF Docs. Nos. 199 and 200). Defendants Agramonte, Barrios and Kone failed to appear for depositions and are precluded from testifying at trial (*see* NYSCEF Doc. No. 171).

## DISCUSSION

The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. New York Univ. Med., Ctr.*, 64 NY2d 851 [1985]). “The proponent of summary

judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant has satisfied this standard, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Kaufman V. Silver*, 90 NY2d 204 [1997]). To defeat a motion for summary judgment, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Elstein v. City of New York*, 209 AD2d 186 ([1<sup>st</sup> Dept 1994]). Mere conclusions, unsubstantiated allegations or assertions are insufficient to create an issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*see Celardo v. Bell*, 222 AD2d 547,548, [2d Dept 1995]).

“[A] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident” (*Cabrera v. Rodriguez*, 72 AD3d 553, 553 [1st Dept 2010]). Moreover, in a “chain-reaction collision, responsibility presumptively rests with the rearmost driver” (*Mustafaj v. Driscoll*, 5 AD3d 138, 138 [1st Dept 2004]). The rearmost driver then must present a “nonnegligent explanation for the accident” or “a nonnegligent reason for her failure to maintain a safe distance between her car and the lead car” (*Mullen v. Rigor*, 8 AD3d 104, 104 [1<sup>st</sup> Dept 2004]). “[I]n chain collision accidents, the operator of the middle vehicle may establish prima facie entitlement to judgment as a matter of law by demonstrating that the middle vehicle

was struck from behind by the rear vehicle and propelled into the lead vehicle” (*Skura v. Wojtowski*, 165 AD3d 1196, 1998-199 [2d Dept 2018] [internal citations omitted])

### **Plaintiff’s Motion for Summary Judgment**

In support of the instant motion, plaintiff argues that as he was a passenger in a car that got rear-ended, he established his prima facie entitlement to liability pursuant to Vehicle and Traffic Law (“VTL”) § 1129(a). In turn, plaintiff argues defendants must come forward with a non-negligent excuse for the rear-end collision. In addition, plaintiff argues that any claim of brake failure as a non-negligent excuse for the rear end collision cannot be sustained. In support of this, plaintiff points to defendant Tod Randall’s deposition testimony wherein he testified, among other things, when he attempted to break the truck fully, the accident was instantaneous and that his first indication that the truck was not going to stop was the impact itself (*see* NYSCEF Doc. No. 199). Plaintiff also notes that Randall testified that the accident happened so quickly he cannot remember if the breaks felt different when he tried to apply them to stop before the accident (*id.*). In addition, plaintiff points to the expert report of Jeffrey Lange, P.E, wherein he finds that “based upon the deposition of Tod Randall, and Michael Graff, the Post Collision Work Order, the Post Accident Inspection Report and his own research, there is no evidence to substantiate that the collision at issue was caused, in part or in whole, by a sudden brake malfunction” (*see* NYSCEF Doc. No. 201).

In opposition to plaintiff’s motion, defendants Tod Randall, the City of New York and the New York City Department of Sanitation (hereinafter, “the City”) argue that plaintiff’s motion must be denied as a question of fact remains to the mechanical failure of the brakes in the DSNY truck. The City argues that a final decision on the merits has already been rendered regarding the proximate cause of plaintiff’s alleged accident in Honorable Justice Ramseur’s

Decision and Order dated March 8, 2021 in the case *Norris v. The City et al* (New York County Index No. 160110/2019), and that decision constitutes the law of the case (*see* NYSCEF Doc. No. 228). Specifically, the City claims this Court has already determined as a matter of law, in the earlier matter involving the all of the same defendants, that a question of fact exists as to whether an unanticipated brake failure caused the accident, and as plaintiff asserts a similar theory of liability against the City as plaintiff in the companion case from the same accident, plaintiff's motion must also fail, under law of the case doctrine. Additionally, in support of the argument that a question of fact exists, the City points to defendant Tod Randall's EBT testimony wherein he testified as he approached traffic at the next red light, he pressed the breaks and they did not apply (*see* NYSCEF Doc. No. 199). The City also submits the Affidavit of Michael Graff, a Supervisor of Mechanics for DOS, wherein he asserts that a break performance test was performed after the accident and the service break and the parking break both failed (*see* NYSCEF Doc. No. 200). Further, the City highlights the post-accident inspection report showed that there were air leaks in the service break test and the air drain vales on the center air tank were leaking (*id.*). However, the City does note that Mr. Graff testified he was only familiar with this vehicle because he reviewed the records and was not involved in the post-accident assessment of this truck, nor were the people he supervised (*id.*).

In reply, plaintiff argues that the City's claims the doctrine of "law of the case" precludes summary judgment in this case is meritless, as it is a rule of practice that aims to prevent the relitigation issues that have already been judicially determined in the same case. Plaintiff argues that here, the City fails to show that the accident was caused by an unanticipated problem and that they exercised reasonable care to keep the brakes in good working order. Plaintiff claims the City have failed in their burden to establish a question of fact as to their non negligence because

they have not established sudden brake failure occurred and the doctrine of “law of the case” does not apply in the matter at issue.

When a driver lays the blame for an accident on break failure, “it is incumbent upon [it] to show that the problem with the brakes was unanticipated, and that it had exercised reasonable care to keep them in good working order” (*Normoyle v. New York City Transit Authority*, 181 AD2d 498, 498-499 [1<sup>st</sup> Dept 1992] [internal citations omitted]).

The City’s argument that this Court must follow Justice Ramseur’s March 10, 2021 decision in *Norris v. The City et al* (New York County Index No. 160110/2019) as it is the “law of the case” in the case at hand is unavailing (*People v. Evans*, 94 NY2d 499, 502 [2000] [“Law of the case addresses the potentially preclusive effect of judicial determinations made in the course of a single litigation *before* final judgment”]). As such, the issue of fact will be determined below.

Here, plaintiff met his initial burden of establishing prima facie entitlement to summary judgment based on the undisputed fact that plaintiff was a passenger in the foremost vehicle in a chain-collision accident, thereby shifting the burden to defendants to demonstrate a nonnegligent explanation for the collision. In turn, defendant Tod Randall testified that the brakes failed, which caused him to rear-end the vehicle in front of him (*see* NYSCEF Doc. No. 199). He further testified that prior to the subject accident, he did not experience any issues with the brakes (*id.*). Furthermore, the maintenance and repair records show that the DSNY vehicle had been subject to routine service and that post-accident brake test showed the brakes failed (*see* NYSCEF Docs. Nos.151, 152, 153, 177, 178, 181, 182). Mr. Graff also testified that the post-accident test showed brake failure (*see* NYSCEF Doc. No. 200). As such, the Court finds the City tendered evidentiary proof in admissible form sufficient to defeat plaintiff’s motion for

summary judgment (*Schuster v. Amboy Bus Co.*, 267 AD2d 448, 449 [2d Dept 1999]; *Suitor v. Boivin*, 219 AD2d 799, 799 [4<sup>th</sup> Dept 1995]; *cf. Stanisz v. Tsimis*, 96 AD2d 838, 838 [2d Dept 1983]).

### **Defendants Agramonte's and Barrios' Cross-Motion**

Defendants Agramonte and Barrios cross-move for an Order dismissing the Complaint and all cross claims.

In support of their cross-motion, and in opposition to plaintiff's motion, Agramonte and Barrios argue that any question as to the alleged brake failure of the City defendants' vehicle merely goes to whether co-defendants may or may not have an emergency defense to their liability, but is utterly irrelevant to a summary judgment determination of the lack of liability of defendants Agramonte and Barrios. Defendants Agramonte and Barrios note, that while they are precluded from testifying at trial, and/or for that matter, even assuming their preclusion from providing any affidavits, such are not necessary to be entitled to summary judgment here. They argue that there is ample evidence in the record that defendants Agramonte and Barrios are not liable.

Defendants Agramonte and Barrios point to co-defendant Kone's Affidavit wherein he averred that he learned the DSNY truck had struck the Barrios and Agramonte's vehicle in the rear (*see* NYSCEF Doc. No. 57). Additionally, Agramonte and Barrios also point to additional evidence in the certified Police Accident Report which notes: "Operator of Vehicle 4 (co-defendant Tod Randall) stated he rear ended Vehicle 3 (co-defendants Agramonte and Barrios) causing (the co-defendants Agramonte and Barrios) vehicle to subsequently collide with Vehicle 2 (co-Defendant Kone) and (the Kone vehicle) subsequently colliding with Vehicle 1 (Plaintiff's vehicle)...all Drivers confirmed Operator of Vehicle 4 (co-Defendant Tod Randall's) story" (*see*

NYSCEF Doc. No. 195). Defendants argue that these statements are specifically attributed to the identified parties, and as such, are admissible as admissions against interest, and/or present sense impression, and/or excited utterance exceptions to hearsay. Therefore, defendants Agramonte and Barrios argue that summary judgment should be granted, and the Complaint and any and all cross-claims against them should be dismissed.

In opposition, the City argues that co-defendants' cross-motion for summary judgment must be denied because a question of fact remains as to the mechanical failure of the DSNY truck.

In opposition, plaintiff argues that as the summary judgment was withdrawn as to defendants Agramonte and Barrios, their cross-motion is now moot.

As an initial matter, the Court will decide summary judgment for defendants Agramonte and Barrios irrespective of plaintiff's argument that their cross-motion is now moot. CPLR 3212(b), states that if "it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

Here, there is uncontroverted evidence that defendants Agramonte's and Barrios' vehicle was standing still when struck from behind by the City's vehicle. As such, defendants Agramonte and Barrios made a prima facie showing of entitlement to judgment as a matter of law (*Hatzis v. Belliard*, 13 AD3d 106, 106 [1<sup>st</sup> Dept 2004] ["Defendants made a prima facie showing that the accident was not due to their negligence, namely, that their vehicle was pushed into the rear of plaintiffs' vehicle when it was itself hit in the rear by another vehicle. This shifted the burden to plaintiffs to raise an issue of fact as to defendants' negligence"]). In turn, the City and plaintiff failed to raise a triable issue of fact. The Court finds the City's argument that defendants Agramonte's and Barrios' motion must be denied because there is a question of fact

regarding mechanical failure of the DSNY truck unavailing (*Yusupov v. Supreme Carrier Corp.*, 240 AD2d 660, 660-661 [“The invocation of the emergency doctrine by the defendants...is irrelevant to the issue of appellant’s freedom from negligence”])).

### **Defendant Kone’s Cross-Motion**

Defendant Kone cross-moves for an Order dismissing plaintiff’s Complaint and all cross-claims.

In support of the cross-motion, defendant Kone argues that there is no negligence on his part with respect to the happening of the subject accident. Defendant Kone asserts in his own Affidavit that he was stopped in response to a red-traffic signal, and while stopped, he was struck in the rear causing his vehicle to be pushed into the vehicle ahead of him. In addition, Kone argues that the admissions made by defendant Randall to the police in the certified police report, wherein he states that he rear-ended defendant Agramonte’s and Barrios’ vehicle, causing them to rear-end defendant Kone’s vehicle are admissible. Additionally, Kone argues that the fact there may be a question of fact as to whether the brake failure on the DSNY truck qualifies as an emergency situation and non-negligent explanation is of no consequence to Kone. Kone asserts it remains undisputed that his vehicle was at a full stop at a red light at the time of the accident, and as such, the cross-motion should be granted, and the action should be dismissed against defendant Kone.

In opposition, the City puts forth the same argument as stated in opposition to co-defendants Agramonte’s and Barrios’ cross-motion.

In opposition, plaintiff argues that as the summary judgment was withdrawn as to defendant Kone, Kone’s cross-motion is now moot.

In reply, defendant Kone argues that plaintiff's claim that the cross-motion is moot is without merit, as the fact that plaintiff has now withdrawn that portion of his summary judgment motion as to defendant Kone is of no consequence to the viability of the cross-motion. Kone argues the cross-motion would only be moot if plaintiff discontinued the action with prejudice as against Kone. Thus, defendant Kone argues that the cross-motion is not moot and the action should be dismissed against Kone.

Here, defendant Kone established prima facie entitlement to judgment as a matter of law (*Alvarez v. Bracchitta*, 210 AD3d 458, 459 [1<sup>st</sup> Dept 2022]; *Cabrera v. Thomas*, 193 AD3d 406 [1<sup>st</sup> Dept 2021]; *Smith v. Seskin*, 49 AD3d 628, 629 [2d Dept 2008] ["Established their prima facie entitlement to judgment as a matter of law by presenting evidence that the cars they were operating were stopped prior to being hit n the rear by the cars behind them]).<sup>1</sup>

In turn, Plaintiff and the City failed to raise a triable issue of fact. The Court finds the City's argument that defendant Kone's motion must be denied because there is a question of fact regarding mechanical failure of the DSNY truck also unavailing (*Yusupov*, 240 AD2d at 660-661 ["The invocation of the emergency doctrine by the defendants...is irrelevant to the issue of appellant's freedom from negligence"]).

Accordingly, it is hereby

**ORDERED**, plaintiff's motion for summary judgment is denied; and it is further

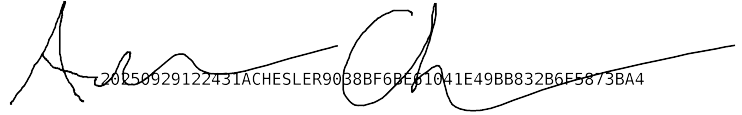
**ORDERED**, defendants Agramonte's and Barrios' cross-motion for summary judgment is granted; and it is further

**ORDERED**, defendant Kone's cross-motion for summary judgment is granted.

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<sup>1</sup> The Court is ruling on Summary Judgment for defendant Kone over plaintiff's objection that Kone's cross-motion is now moot for the reasons stated in the discussion related to co-defendants Agramonte's and Barrios' cross-motion.

This constitutes the Decision and Order of the Court.



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9/29/2025  
**DATE**

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**ARIEL D. CHESLER, J.S.C.**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE