Mejia v Baker
2025 NY Slip Op 33812(U)
October 7, 2025
Supreme Court, New York County
Docket Number: Index No. 156859/2024
Judge: Richard Tsai

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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HEMIL MEJIA and HAAFID ALMULAIKI

Plaintiffs,

- v -

WENDELL BAKER and MTA BUS COMPANY,

Defendants.

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INDEX NO. 156859/2024

MOTION DATE 03/31/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 15 - 31 were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

In this action, plaintiffs Hemil Mejia and Haafid Almulaiki allege that, while sitting in traffic, a bus, owned by defendant MTA Bus Company and operated by Wendell Baker, rear-ended their vehicle.

Now, plaintiffs move for partial summary judgement in their favor on the issue of liability, seek to dismiss "the affirmative defense of comparative negligence in the answer," and seek to dismiss "the counterclaim contained in the [a]nswer of defendants" as well (notice of motion [NYSCEF Doc. No. 15] ¶ 1). Defendants oppose the motion.

BACKGROUND

Plaintiffs allege that on November 8, 2023, Mejia was operating a 2018 Ford and that Almulaiki was a lawful passenger in the vehicle (summons and complaint [NYSCEF Doc. No. 1] ¶¶ 3-6). They further allege that while in the car, a bus, alleged to be owned and operated by defendants, collided with the rear of plaintiffs' vehicle (*id.* ¶ 24).

According to the affidavits of both Mejia and Almulaiki, they were both "on duty NYPD officers" when the incident occurred (plaintiffs' exhibit 6 [NYSCEF Doc. No 23] Mejia and Almulaiki affidavits). Mejia, the driver, stated he was "travelling in the right lane" of "southbound 2nd Avenue," which "had 3 lanes of traffic in the area" (Mejia affidavit ¶ 5). While travelling, Mejia stated "I brought my vehicle to a stop for heavy traffic and remained stopped for approximately 15-20 seconds when suddenly and without warning, the defendant, and MTA bus rear ended me and my co-worker passenger" (*id.* ¶ 7). Similarly, Almulaiki stated "Mr. Mejia came to a full stop for heavy traffic and remained stopped for approximately 5 seconds when suddenly we felt a heavy impact to the rear of our vehicle" (Almulaiki affidavit ¶ 7). To further support their motion, plaintiffs' counsel submitted a certified police report and videos of the incident

(plaintiff's exhibit 4 [NYSCEF Doc. No. 21], certified police accident report; plaintiff's exhibit 5 [NYSCEF Doc. No. 22], Citizen App Video).

Defendant MTA Bus Company admits to ownership of the bus involved in the incident (defendants' counterstatement of undisputed material facts [NYSCEF Doc. No. 26] ¶ 3). Defendants admit that defendant Wendell Baker was an employee of MTA Bus Company, and that Baker operated the bus during the time of the incident (*id.* ¶ 4 [admitting Baker operated the bus at the time of the accident]; plaintiff's exhibit 2 [NYSCEF Doc. No. 19], answer ¶ 3 [admitting that Baker was employed by MTA Bus Company]).

DISCUSSION

Based on the allegations, and undisputed facts above, plaintiffs move for summary judgement to the extent that there is a finding of liability in their favor. Additionally, plaintiffs seek to dismiss the affirmative defense of comparative negligence and seek to dismiss the counterclaim from defendants' answer. Defendants oppose the motion, arguing summary judgement is inappropriate.

> "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, plaintiffs have met their prima facie burden. "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, nonnegligent explanation for the accident" (*Matos v Sanchez*, 147 AD3d 585, 586 [1st Dept 2017]). Plaintiffs established they were rear-ended based on their respective affidavits (Mejia and Almulaiki affidavits).

Additionally, plaintiffs submitted a certified police accident report which states: "Driver of Vehicle #2 (MTA Bus) states he was in bus lane on 2 Avenue traveling S/B and saw that there was a parked car in bus lane. Driver #2 merged into the right driving lane and rear ended vehicle #1" (certified police accident report at 3). Contrary to defendants' argument, this admission against interest by Baker—that he "rear ended vehicle #1"—is admissible (*Thompson v Coca-Cola Bottling Co.*, 170 AD3d 588, 588 [1st Dept 2019] ["Plaintiff made a prima facie showing of negligence on the part of defendants by submitting a police report of the incident containing defendant Adorno's statement that he backed into plaintiff's vehicle, an admission against interest"]). As such, this submission further supports plaintiffs' prima facie showing.

Finally, plaintiffs also submitted videos in support of their motion. Despite this submission, defendants are correct that the submitted video(s)[1] lack probative value—since they do not appear to depict the moment where defendants' vehicle struck plaintiffs' vehicle. Regardless, plaintiffs have nonetheless made their prima facie showing, based on their affidavits and the certified police accident report.

"Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-54 [1st Dept 2010]). In an attempt to raise a material issue of fact after a prima facie showing, "[m]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to raise a triable issue of fact" (*id.*).

In opposition, defendants argue that plaintiffs' affidavits "obviously creates a question of fact as to how long, if at all the vehicle had been stopped prior to the alleged accident when two plaintiffs who were present in the same car offered testimony which ranges from 5 seconds to 20 seconds" (defendants' motion in opposition [NYSCEF Doc. No. 25) at 2, ¶ 7). Seemingly, defendants imply that the front vehicle made a short, or sudden, stop.

Despite this argument, there is a well-established body of case law from the Appellate Division, First Department that the sudden stop of the lead vehicle proceeding through an intersection does not establish a non-negligent explanation for a rear-end collision (*see e.g. Vasquez v Chimborazo*, 155 AD3d 432, 433 [1st Dept 2017]; *Morgan v Browner*, 138 AD3d 560, 560-61 [1st Dept 2016]; *Chowdhury v Matos*, 118 AD3d 488 [1st Dept 2014]; *Johnson v Phillips*, 261 AD2d 269, 271 [1st Dept 1999] [sudden stop in stop-and-go traffic]; *Malone v Morillo*, 6 AD3d 324, 325 [1st Dept 2004] [sudden stop in the middle of the intersection while the light was yellow or red]). Thus "a 'claim by the rear driver that the lead vehicle made a sudden stop, standing alone, is insufficient to rebut the presumption of negligence" (*Ahmad v Behal*, 221 AD3d 558, 559 [1st Dept 2023]). As such, plaintiffs' motion for summary judgment as to liability is granted.

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[1] For the video submitted as plaintiffs' exhibit 5 (NYSCEF Doc. No. 22), plaintiffs e-filed a single page with the following link: https://vimeo.com/1068222319?share=copy#t=0. The video appears to be from the "Citizen App," and only depicts the scene after the incident. The court notes that this video was not submitted in compliance with the court's Part Rules which state that "Any video footage submitted as an exhibit to a motion for summary judgment should be delivered to the courtroom on a USB flash drive" (Part 21 Rules, https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/Rules/part21-rules.pdf [last accessed Oct. 1, 2025]). Due to workplace restrictions on Internet content, not all links to video websites are accessible to the court.

In addition, in plaintiffs' counsel's affirmation in support of this motion, counsel references a video that was submitted as NYSCEF Doc. No. 13 (*see* affirmation of plaintiffs' counsel in support of motion [NYSCEF Doc. No. 16] ¶ 10). This document contains the following link: https://vimeo.com/1066679133 (response to demand [NYSCEF Doc. No. 13]). The linked video appears to be from a rear facing camera on an unidentified car and depicts that car being struck from behind by a black sedan. Neither a bus nor an NYPD vehicle can be seen in the video.

As MTA Bus Company is the admitted owner of the vehicle, operated by Baker with MTA Bus Company's permission, plaintiffs met their prima facie burden that MTA Bus Company is vicariously liable for Shields's negligence under Vehicle and Traffic Law § 388 (*see Murdza v Zimmerman*, 99 NY2d 375, 379 [2003]).

The branch of the motion seeking dismissal of the first affirmative defense of culpable conduct and the counterclaim as against Hemil Mejia is also granted, as defendants failed to overcome the presumption that the driver of the lead vehicle in a rear-end collision is not negligent (*Ly Giap v Hathi Son Pham*, 159 AD3d 484, 485 [1st Dept 2018] ["A claim that the lead driver came to a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent and the stopped vehicle was not negligent"]; *Soto-Maroquin v Mellet*, 63 AD3d 449, 449-50 [1st Dept 2009] [holding that the claim that plaintiff made a sudden stop failed to explain "why defendant driver did not maintain a safe distance between herself and the vehicle ahead, and is otherwise insufficient to rebut the presumption that no negligence on plaintiff's part contributed to the accident"]).

To be clear, the determination of defendants' fault as a matter of law on this motion does not include the issue of whether plaintiffs suffered serious injuries 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]).

CONCLUSION

Based upon the foregoing documents, it is hereby **ORDERED** that plaintiffs' motion for summary judgement is **GRANTED**, and plaintiffs are granted partial summary judgment in their favor on the issue of liability against defendants Wendell Baker and MTA Bus Company, who are jointly and severally liable; and it is further

ORDERED that defendants' first affirmative defense of comparative negligence and the counterclaim as against defendant Hemil Mejia are **DISMISSED**.

The parties are reminded that this matter is scheduled for a **compliance conference** on **March 5, 2026,** at **2:15 p.m.** in courtroom **280** at 80 Center Street, New York, New York.

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10/7/2025
DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**