

**Monaco v New York City Tr. Auth.**

2025 NY Slip Op 33979(U)

October 16, 2025

Supreme Court, New York County

Docket Number: Index No. 159740/2024

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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MICHELLE MONACO,

Plaintiff,

- v -

THE NEW YORK CITY TRANSIT AUTHORITY, ACCESS-A-RIDE, AGAPE TRANSPORTATION INC. and THE METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants,

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INDEX NO. 159740/2024

MOTION DATE 03/03/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 18 - 28 and 31 - 34 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, it is hereby **ORDERED** that the motion for summary judgment by defendants the New York City Transit Authority (NYCTA), Access-A-Ride, and the Metropolitan Transportation Authority (MTA) (collectively, Transit Defendants) is **DENIED** as premature, with leave to renew after the completion of defendants' deposition(s), but no later than 120 days after the filing of the note of issue; and it is further

**ORDERED** that the parties are directed to appear for an in-person status conference on **March 26, 2026, at 3:00 p.m.**, in IAS Part 21, 80 Centre Street Room **280**, New York, New York.

According to the complaint, on July 27, 2023, at approximately 11:10 a.m., "plaintiff was caused to violently fall to the ground" while attempting to "step down from an inappropriately sized and heightened vehicle and was declined requested assistance from the operator of the subject vehicle to safely alight from said vehicle" (complaint [NYSCEF Doc. No. 1] ¶¶ 24 – 25). Plaintiff alleged that Agape Transportation Inc. (Agape) and Transit Defendants were the owners of the subject vehicle and named "John Doe" as the operator of the vehicle (*id.* ¶¶ 17 - 18). Plaintiff further alleges that Transit Defendants, "retrained/contracted defendant Agape Transportation Inc. to provide transportation services to plaintiff" (*id.* ¶ 12). Finally, plaintiff alleges the operator of the vehicle is "employed/retained/contracted" by Transit Defendants to provide services to plaintiff (*id.* ¶ 13).

Pursuant to CPLR 3211 and CPLR 3212, Transit Defendants move for summary judgement and dismissal of the "complaint of the plaintiff, and all cross-claims of any party" (defendants' notice of motion [NYCSEF Doc. No. 18]). Transit Defendants argue

they are “not a proper party to the instant action as a matter of law,” and “owed plaintiff no duty of care and, therefore, are not liable for the subject incident as a matter of law” (*id.*). Lastly, Transit Defendants state liability cannot be “premised upon the ownership, operation, management, control, inspection, maintenance, repair, etc. of the vehicle or the employment or control of [John] Doe by NYCTA, MTA, and/or the unknown Access-A-Ride” (*id.*). Plaintiff opposes the motion.

“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-Transit party” (*Nellenback v Madison County*, — NY3d —, 2025 NY Slip Op 02263 [2025] [internal citations omitted]).

In this case, Transit Defendants failed to meet their prima facie burden. In support of their motion, Transit Defendants rely on an affirmation from Ronald Roberts (defendants’ counsel’s affirmation in support of motion [NYSCEF Doc. No. 19] at 2; see also defendants’ Exhibit D [NYSCEF Doc. No. 23]). Roberts states that he is the Principal Administrative Associate for defendant NYCTA and has been employed since December 2010 (Exhibit D ¶¶ 1 – 2). According to Roberts, his responsibilities include “claims processing and document review related to General Municipal Law §50-e” (*id.* ¶ 2).

In his affirmation, Roberts states that the “trip id for plaintiff’s trip (exhibit 2) is 241272970” (*id.* ¶ 8). Based on this Trip ID, Roberts asserts that Transit Defendants were not the registered owners of the subject vehicle, nor was the operator, identified as Pathe Wilane, employed by Transit Defendants (*id.* ¶¶ 9 – 10). Furthermore, Roberts states that he “searched for contracts between defendants and Agape Transportation Inc. and found none (*id.* ¶ 11). Based on this affirmation, Transit defendants argue they are not liable based on a lack of ownership, control, and a lack of a duty owed to plaintiff.

However, Roberts failed to state the basis for his knowledge in asserting that plaintiff’s Trip ID was indeed 241272970. The complaint did not identify the vehicle, the trip, nor the operator of the vehicle, and no accident report was submitted in the moving papers. Plaintiff’s counsel admits plaintiff “arranged a ride through Access-A-Ride via a smartphone application,” but the Trip ID was never provided (plaintiff’s counsel’s affirmation in opposition [NYSCEF Doc. No. 32] ¶ 6).

Rather, it would appear that the basis for Roberts’ belief that plaintiff’s Trip ID was 241272970 is a document annexed as exhibit 2 to Roberts’ affirmation (NYSCEF Doc. No. 25) titled “Trip History by Client ID (Single or Multiple Clients)” and containing four rows that appear to have been highlighted. Plaintiff correctly points out “[t]here is no accompanying explanation of where this document came from, or any identifying features of what the other 8 pages of the 8 [sic] of 9-page document contains” (plaintiff’s

affirmation in opposition [NYSCEF Doc. No. 32] ¶ 8). As such, it is difficult to ascertain the reliability of the information upon which Roberts' knowledge is based.<sup>1</sup>

Although it is unclear exactly how he reached these conclusions, Roberts asserts that the "Subject Vehicle" on the date of plaintiff's accident was owned by non-party American United Transportation Inc. and operated by non-party Pathe Wilane (Roberts affirmation ¶¶ 9-10).<sup>2</sup> Since Roberts does not explain how he reached these conclusions, plaintiff is entitled to the favorable inference that Roberts reached them at least in part based on "the files and records of NYCTA and the Access-A-Ride program (the "AAR") which the NYCTA administers" and for which he had access to as a Principal Administrative Associate employed by NYCTA (*Ortega v Everest Realty LLC*, 84 AD3d 542, 545 [1st Dept 2011] ["On a motion for summary judgment, we are required to draw all favorable inferences in favor of the nonmoving party"]). Thus, plaintiff should be allowed to explore the potential connection between the alleged non-party owner and non-party operator and the Access-A-Ride program. Roberts' conclusory assertion that neither American United Transportation Inc. nor Wilane were "an employee, or contractor for the NYCTA, AAR and/or MTA or an agent or Affiliate of the AAR program" does not establish prima facie entitlement to summary judgment on this pre-discovery motion for summary judgment (Roberts affirmation ¶ 12; *Ross-Germain v Millennium Med. Services, P.C.*, 144 AD3d 658, 660 [2d Dept 2016] [defendant's "conclusory" affidavit failed to establish "prima facie" entitlement to summary judgment]).

Because Roberts has not been deposed, and the information about the operation of the Access-A-Ride program is exclusively within the knowledge or control of the Transit Defendants, this court concludes that summary judgment dismissing the complaint in its entirety against the Transit Defendants at this stage would be premature (CPLR 3212 [f]; see *Curry v Hundreds of Hats, Inc.*, 146 AD3d 593, 594 [1st Dept 2017] [plaintiff, a background actress, was entitled to complete discovery in her effort to establish the precise relationships among the various entities and their relationships to the director and producer of the movie]).

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<sup>1</sup> Although not raised by plaintiff, the court also notes that, to the extent this Trip History was the basis for Robert's knowledge that plaintiff's Trip ID was 241272970, the document was not in admissible form, as neither Roberts or anyone else affirmed that he "was personally familiar with the [NYCTA]'s record keeping practices and procedures and, thus, [] did not lay a proper foundation for the admission" of this document (*Citibank, N.A. v Cabrera*, 130 AD3d 861, 861-62 [2d Dept 2015]; see also *HSBC Bank USA, N.A. v Vasishta*, 2025 NY Slip Op 04885 [2d Dept Sept. 10, 2025] ["When a party relies upon the business records exception to the hearsay rule in attempting to establish its prima facie case, a proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures"]).

<sup>2</sup> Although Roberts states that, "I searched the New York State Motor Vehicle Registration/Owner database to determine the registered owner of the Subject Vehicle on July 27, 2023", Roberts does not explain how he determined the identity of the "Subject Vehicle", and he does not explain how he was then able to determine its owner.

Assuming, for the sake of argument that Wilane was operating a vehicle that was part of providing paratransit services under the Access-A-Ride program, it remains an open question whether the Transit Defendants could be held vicariously liable for an operator’s negligence if they were not the owner of a vehicle, which was not addressed by either side. The case law that the Transit Defendants cite about the functions of the MTA did not involve the Access-A-Ride program.<sup>3</sup>

For all these reasons, this motion for summary judgment is denied without prejudice to another motion seeking same relief after the completion of defendants’ deposition(s), but no later than 120 days after the filing of the note of issue.



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<u>10/16/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" 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>3</sup> In *Walwyn v Access-A-Ride* (229 AD3d 838, 840 [2d Dept 2024]), the Appellate Division, Second Department affirmed denial of a motion to dismiss the complaint as against, among others, the NYCTA, reasoning that the allegations of an employer-employee and/or principal-agency relationship between the NYCTA and the owner and operator of the vehicle were sufficient to survive a pre-discovery motion to dismiss.