

Gomez v City of New York

2025 NY Slip Op 34552(U)

November 26, 2025

Supreme Court, New York County

Docket Number: Index No. 150536/2021

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M

Justice

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AIDA FRANCESCA CARRION GOMEZ,

Plaintiff,

- v -

THE CITY OF NEW YORK, HEMO OJHA

Defendant.

-----X

INDEX NO. 150536/2021

MOTION DATE 09/04/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 20, 21, 22

were read on this motion to SUMMARY JUDGMENT.

Upon the foregoing documents, Plaintiff Aida Franchesca Carrion Gomez’ (“Plaintiff”) motion pursuant to CPLR § 3212 for an order granting summary judgment to Plaintiff on liability and striking Defendant the City of New York’s (the “City”) affirmative defense of culpable conduct is granted without opposition.

BACKGROUND

Plaintiff commenced this personal injury action on January 15, 2021, to recover for damages allegedly sustained on May 29, 2019 (NYSCEF Doc No. 1, 17). Specifically, Plaintiff was a pedestrian standing on the sidewalk in front of the International House of Pancakes (“IHOP”) located on Broadway between 176th Street and 177th Street when a New York City Police Department (“NYPD”) traffic unit vehicle backed into her (NYSCEF Doc No. 17, plaintiff affidavit ¶ 2). Plaintiff was reading a parking sign posted along the curb when she felt an impact to the side of her body and observed the traffic unit vehicle backing into her (*id.*).

Plaintiff’s complaint interposes a single cause of action for negligence against the City (NYSCEF Doc No. 1).¹ On April 1, 2021, the City joined issue by service of its answer (NYSCEF Doc No. 4). On September 7, 2023, Plaintiff filed a request for a preliminary conference (NYSCEF Doc No. 5-6). Plaintiff filed the instant motion on September 4, 2025 (NYSCEF Doc No. 12).

Plaintiff contends that summary judgment on the issue of liability is warranted because the City violated certain provisions of the Vehicle and Traffic Law (the “VTL”) and breached its common law standard of care when it backed a traffic unit vehicle into Plaintiff while she was standing on the sidewalk (NYSCEF Doc No. 13). Plaintiff also argues that these facts and

¹ On September 30, 2025, Plaintiff and the City executed a stipulation discontinuing this action as against Defendant Hemo Ojha (NYSCEF Doc No. 18).

circumstances demonstrate that Plaintiff did not cause or contribute to her accident (*id.*). Plaintiff tenders pleadings as well as an affidavit in support of the motion (NSCEF Doc No. 15-7).

The City partially opposes Plaintiff's motion. Specifically, the City "takes no position as to any determination of fault," but instead, argues that Plaintiff has not met her burden of demonstrating a serious injury as defined by Insurance Law § 5102 (NYSCEF Doc No. 22, Nierman aff' ¶ 3, 5, 7).

DISCUSSION

A motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). To be a "material issue of fact" it "must be genuine, bona fide and substantial to require a trial" (*Leumi Financial Corp. v Richter*, 24 AD2d 855 [1st Dept 1965]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and 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 (*Fernandez v Ortiz*, 183 AD3d 443, 443-444 [1st Dept 2020]). The VTL imposes certain duties on drivers, which are applicable for the purposes of establishing negligence, and a party's violation of the VTL constitutes negligence *per se* (*Davis v Turner*, 132 AD3d 603, 603 [1st Dept 2015]). Specifically, VTL § 1146 imposes a statutory duty on drivers to "exercise due care to avoid colliding with any [. . .] pedestrian [. . .] upon any roadway" (Vehicle and Traffic Law § 1146). Under VTL § 1162, drivers have a statutory duty to not "move a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety" (Vehicle and Traffic Law § 1162). Finally, under the common-law, drivers have a duty to see that which could have been seen through the proper use of one's senses (*Thompson v Schmitt*, 74 AD3d 789, 789-90 [2d Dept 2010]).

In this instance, Plaintiff met her *prima facie* burden of demonstrating entitlement to judgment as a matter of law. Plaintiff's uncontroverted evidence demonstrates that she was standing on the sidewalk when an NYPD traffic unit vehicle backed onto the sidewalk and into Plaintiff in violation of the VTL and in breach of the common law standard of care (*Sacks v Rentacrate Enters., LLC*, 238 AD3d 467, 468 [1st Dept 2025] ["[p]laintiff demonstrated that defendant driver was negligent as a matter of law" when he submitted an affidavit demonstrating that the defendant driver "back[ed] up his truck into plaintiff without taking adequate precautions"]; *see also Plaut v Allright Parking Mgmt., Inc.*, 18 AD3d 396, 397 [1st Dept 2005]). Notably, the City takes no position on the issue of fault and its partial opposition fails to provide a non-negligent explanation for the collision (*Sacks*, 238 AD3d at 468 ["defendants failed to offer a nonnegligent explanation for the accident" and despite their assertion to the contrary, "plaintiff's

motion was not premature since defendants would have knowledge of any nonnegligent explanation for the collision based on defendant driver's direct involvement"]; *Urena v GVC Ltd.*, 160 AD3d 467, 467 [1st Dept 2018]; *compare De Diaz v Klausner*, 198 AD3d 475 [1st Dept 2021] ["defendant raised a triable issue of fact based on his version of the accident which conflicted with plaintiff's account"]. Moreover, Plaintiff was entitled to anticipate that the City would obey traffic laws along with the common-law standard of care and not drive a vehicle onto the sidewalk where pedestrians, such as Plaintiff, are likely to be present (*Huang v Franco*, 149 AD3d 703 [2d Dept 2017]). Accordingly, Plaintiff's motion for summary judgment on liability is granted.

Next, Plaintiff also met her *prima facie* burden of demonstrating the absence of a material issue of fact with respect to Plaintiff's alleged culpable conduct. Culpable conduct reduces a personal injury plaintiff's damages in the proportion to which the conduct caused the damages (CPLR §§ 1411, 1412). A plaintiff moving to dismiss a defendant's affirmative defense of culpable conduct must demonstrate that she was not at fault in the happening of the accident (*Jones v Zuo*, 220 AD3d 933, 934 [2d Dept 2023]). Here, the record before the court demonstrates that Plaintiff was standing on the sidewalk when an NYPD traffic unit vehicle backed onto the sidewalk and into Plaintiff's side body. The City does not dispute these facts, nor does the City raise any other fact(s) to create a triable issue (*see Baxter v Gosh*, 241 AD3d 1144, 1145 [1st Dept 2025]; *compare Hockaday v Hessel*, 223 AD3d 465, 466 [1st Dept 2024] ["conflicting evidence as to whether plaintiff was within or next to the crosswalk [. . .] precludes dismissal of the defense based on comparative fault"]). Accordingly, Plaintiff's motion to dismiss the City's affirmative defense of culpable conduct is granted.

Finally, while the City contends that Plaintiff has not met her burden of demonstrating that she was seriously injured as defined by Insurance Law § 5102, the City recognizes that Plaintiff has not moved for summary judgment on the issues of serious injury or causation (NYSCEF Doc No. 22, Nierman aff' ¶ 5, 7). As such, those matters are not before the court at this time.

Accordingly, it is hereby

ORDERED that summary judgment on liability is granted in favor of Plaintiff Aida Franchesca Carrion Gomez and against Defendant the City of New York; and it is further

ORDERED that summary judgment to dismiss Defendant the City of New York's affirmative defense of culpable conduct is granted; and it is further

ORDERED that no determination is made on the issues of serious injury or damages as those issues remain for trial; and it is further

ORDERED that the Clerk of the Court is directed to set this matter down for a preliminary conference in the Differentiated Case Management Part on the next available date; and it is further

ORDERED that the parties are hereby directed to appear for a settlement conference before this court in Part 5 on December 10, 2025 at 9:30 AM, in Room 320 of the courthouse located at 80 Centre Street, New York, New York, 10013; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of the court.

11/26/2025
DATE

HASA A. KINGO, 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