

**Duarte v Tahir**

2026 NY Slip Op 30040(U)

January 12, 2026

Supreme Court, Kings County

Docket Number: Index No. 504808/2024

Judge: Kerry J. Ward

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At an IAS Term, Part 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12<sup>th</sup> day of January, 2026.

PRESENT:

HON. KERRY J. WARD, A.J.S.C.

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RODRIGUEZ DUARTE, MERVIN,

*Plaintiff,*

-against-

TAHIR OMER, RAZ TAXI CORP,

*Defendants.*

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**DECISION/ORDER**

Index No.: 504808/2024  
Mot. Seq. 2

Plaintiff Mervin Rodriguez (“Plaintiff”) moves for summary judgment against Defendants Tahir Omer (“Tahir”) and Raz Taxi Corp (“Raz”) on the issue of liability pursuant to CPLR §3212, on the basis that Defendant is fully liable and the sole proximate cause of the subject accident and dismiss Defendants affirmative defenses of comparative negligence. Defendants oppose the motion.

The motion is hereby granted in part, as Plaintiff has established a *prima facie* entitlement to partial summary judgment on the issue of liability. Plaintiff’s request to strike Defendants’ affirmative defenses is denied, and all issues of Plaintiff’s comparative negligence are reserved for trial.

### **Background and Procedural History**

This action for personal injuries arises out of a rear-end collision that occurred on September 17, 2022, at approximately 9:00 a.m. Plaintiff Hernandez filed the Summons and Complaint on February 16, 2024 (Exhibit A, NYSCEF Doc.37), and on March 14, 2024, Defendant interposed an Answer (Exhibit B, NYSCEF Doc. 38). Plaintiff was deposed on November 7, 2024 (Exhibit D, NYSCEF Doc. 40), and Defendant Tahir was deposed on September 29, 2025 (Exhibit E, NYSCEF Doc.41).

At the time of the accident, Plaintiff was a rear-seated passenger in a yellow taxi being operated by Defendant Tahir within the scope of his employment. According to Plaintiff's deposition, Defendant Tahir was transporting Plaintiff from Queens to Brooklyn, and when proceeding straight on Humboldt Street, he allegedly struck a parked and unattended vehicle (Exhibit D, p.13-14). Plaintiff states that the vehicle was maintaining its speed immediately before the accident (*Id.* at p.15). The impact of the accident caused Plaintiff to suffer a blow to the face, which caused him to bleed and lose consciousness (*Id.* at p.13, 16-17).

During his deposition, Defendant Tahir testified that the accident happened on Humboldt Street, a one-way road with one moving lane and parking on both sides (Exhibit E, p.14-15). When describing how the accident occurred, Defendant Tahir stated, "while I was driving the customer told me he does not know the address. I was holding the phone and the car turned and hit the car that was on the right... I did not have a phone. It was the customer's phone... I didn't even use the phone yet. He was giving me the phone. That is when the accident happened. I hit the car on the right" (*Id.* at p.15). After the accident, Defendant Tahir called an ambulance for the Plaintiff and Plaintiff left the scene (*Id.* at p.18-19).

Further, Defendant Tahir stated that the police were called to the scene after the Plaintiff was transported in an ambulance, and the police took a report (*Id.* at p.19). An uncertified and unauthenticated copy of the police accident report states, in part, "At TPOV1 [Defendant Tahir] states he was driving southbound on Humboldt Street and when approaching 447 Humboldt Street he did hit V2 [...] V2 was parked and unattended" (Exhibit F, NYSCEF Doc.42).

### Law and Analysis

Pursuant to CPLR §3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR §3212 [b]; *see Rodriguez v. City of New York*, 31 NY3d 312 [2018]). The motion for summary judgment must also "show that there is no defense to the cause of action" (*Id.*). The party moving for summary judgment must make a *prima facie* showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law (CPLR §3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824 [2014]; *see also Brill v City of New York*, 2 NY3d

648 [2004]). In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them (*see Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 [2012]). Once a *prima facie* showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

To be entitled to partial summary judgment on the issue of liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence (*see Poon v Nisanov*, 162 AD3d 804, 807 [2d Dept. 2018]). Notably, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the Plaintiff seeks summary judgment dismissing an affirmative defense alleging comparative negligence" (*see Maliakel v. Morio*, 185 AD3d 1018, 1019 [2d Dept. 2020]). In addition, a plaintiff's comparative fault does not bar recovery and will only go to the diminution of damages recoverable by plaintiff (*see Rodriguez v. City of New York*, 31 NY3d 312 [2018]).

A rear end collision with a stopped vehicle creates a *prima facie* case of negligence against the operator of the moving vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision (*see Martorell v. Marcus*, 106 A.D.3d 883 [2d Dept. 2013]; *see also Hauser v. Adamov*, 74 A.D.3d 1024 [2d Dept. 2010]). However, a plaintiff is no longer required to show freedom from comparative negligence to establish a *prima facie* entitlement to summary judgment (*see Merino v. Tessel*, 166 A.D.3d 760 [2d Dept. 2018]).

A properly certified police accident report is admissible where the report is made based upon the officer's personal observations and while carrying out police duties (*see Yassin v. Blackman*, 188 A.D.3d 62 [2d Dept. 2020]). In the instant case, however, the police report is uncertified and is therefore not admissible.

Nonetheless, Plaintiff has established a *prima facie* entitlement to partial summary judgment on the issue of liability based on sworn deposition testimony. Here, it is undisputed that Defendant Tahir rear-ended a parked vehicle on the right side of the road. Plaintiff stated under oath that the taxi crashed into a parked car that was legally parked in the lane to the right of them (Exhibit D, p.13-14). In Defendant Tahir's deposition he stated that while he was driving, the car turned and hit the unoccupied car parked on their right, damaging the taxi's front bumper on the right side (Exhibit E, p.15-17).

Plaintiff is therefore entitled to partial summary judgment on the issue of liability.

Based on Defendant Tahir's testimony, however, that Plaintiff handed Defendant his cell phone to give him directions to the desired location raises an issue of fact as to how the alleged collision took place, there is a dispute as to Plaintiff's comparative negligence (*see Pillasagua v. Losco*, 135 A.D.3d 843 [2d Dept. 2016]).

Accordingly, the branch of Plaintiff's motion for summary judgment against Defendant on the issue of liability pursuant to CPLR §3212 is granted. Plaintiff's request to strike Defendants' affirmative defenses is denied, and all issues of Plaintiff's comparative negligence are reserved for trial.

This constitutes the Decision and Order of the Court.

ENTER

KW

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Hon. Kerry J. Ward, A.J.S.C

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