

**Mullings v New York City Dept. of Transp.**

2026 NY Slip Op 30210(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 159405/2018

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

INDEX NO. 159405/2018

ALAN MULLINGS, VERNE FARRAY

MOTION DATE 09/02/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF TRANSPORTATION,
THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is

In this proceeding, defendants the City of New York and the City of New York s/h/a the New York Department of Transportation (collectively "the City") move for an Order (1) pursuant to CPLR 3025(b), granting defendants' leave to amend their Answer to assert the affirmative defense of collateral estoppel and/or res judicata; and (2) upon granting said leave and amendment, pursuant to CPLR 3211 (a)(5), dismissing the Complaint as against the City as this action is barred by collateral estoppel and/or res judicata.

This action arises out of a motor vehicle accident which occurred on July 16, 2017, on the Grand Central Parkway, near 188th Street in Queens County. Plaintiffs Alan Mullings ("Mullings") and Verne Farray ("Farray") were passengers in an automobile, which was one of four vehicles involved in a series of collisions, which began when an intoxicated driver sideswiped a second car while passing it on the right stand. The second car, then, collided with the car that plaintiffs were riding in. Both of those cars then crossed over the metal guardrail and

concrete barrier between the westbound and eastbound lanes, causing an eastbound fourth vehicle to swerve, strike trees and roll over (*see* NYSCEF Doc. No. 25). As a result of the accident, plaintiffs Mullings and Farray filed identical Notices of Claim against the New York City Department of Transportation (“NYCDOT”) in which they alleged the City failed to properly own, design, maintain, and control the subject median barrier and/or guardrail that separates eastbound and westbound traffic on the Grand Central Parkway at or near 188<sup>th</sup> Street (*see* NYSCEF Doc. No. 27).

On October 12, 2017, plaintiffs Mullings and Farray commenced a joint action in the New York State Court of Claims, naming the State and the New York State Department of Transportation (“NYSDOT”) as defendants (*see* NYSCEF Doc. No. 28). In that claim, plaintiffs allege that the State was negligent in the ownership, design, maintenance, and control of the subject roadway, including the median barrier and/or guardrail that separates eastbound and westbound traffic on the Grand Central Parkway, at or near 188<sup>th</sup> Street in Queens, New York (*id.*). On or about October 9, 2018, plaintiffs filed an Order to Show Cause to serve a late notice of claim against the City of New York, and on or about January 14, 2019, the parties stipulated that the proposed notice of claim attached to plaintiff’s Order to Show Cause was deemed served upon the City *nunc pro tunc* to October 11, 2017 (*see* NYSCEF Doc. 29).

On October 10, 2018, plaintiffs commenced the instant action against the City of New York and NYCDOT (*see* NYSCEF Doc. No. 30). In sum, plaintiffs allege that defendants were negligent in the ownership, design, maintenance, and control of the subject roadway, including the median barrier and/or guardrail that separates eastbound and westbound traffic on the Grand Central Parkway, Queens, New York at or near 188<sup>th</sup> Street and that their breach of various duties were the proximate cause of plaintiffs’ injuries (*id.*). On October 25, 2021, in the State

action, a joint liability-only trial was held before the Hon. Faviola A. Soto. Plaintiff's direct case included testimony of plaintiffs Mullings and Farray, and Steven Schneider, plaintiffs' expert witness on roadway design, traffic engineering and accident reconstruction who offered testimony about the guardrails atop the concrete barrier which separated the east and west bound lanes of traffic of the Grand Central Parkway (*see* NYSCEF Doc. No. 32). At the end of plaintiff's case in chief, the State moved for a directed verdict, contending that the plaintiffs had failed to make out a *prima facie* case regarding their claims of negligent design of the subject roadway, including their claim that the guardrails were unsafe (*id.*). Judge Soto agreed and issued an Order directing judgments dated October 25, 2021 (*see id.*, ps. 65-66; NYSCEF Doc. No. 33).

The Court notes that plaintiffs state they have no objection to the City's application to amend its pleadings (*see* NYSCEF Doc. No. ¶ 16), as such, that portion of defendants' motion is granted on consent.

In support of the motion to dismiss, defendants argue plaintiffs should be estopped from pursuing their negligence claims against the City because liability was fully litigated and resolved by Judge Soto in the Court of Claims. Defendants note that while the City was not a party in the Court of Claims matter, that does not preclude the City from asserting and prevailing on either collateral estoppel or a *res judicata* defense as Judge Soto has already determined the decisive issue as a matter of law (*see* NYSCEF Doc. No. 32, ps. 65-66). Defendants contend that the Court of Claims' holding that the plaintiff's had failed to make out a *prima facie* case of negligence, failed to demonstrate that the guardrails were unsafe, and that the drunk driver's conduct was the sole and proximate cause of the accident (which was arrived at after a joint-liability trial) collaterally estops plaintiffs from being able to establish their negligence claims.

As such, defendants argue that in this case plaintiffs' current litigation involves the exact same occurrence and factual issues as the State case in the Court of Claims.

Furthermore, defendants argue there is privity here because the City shares the responsibility for maintaining arterial highways with the State, and plaintiffs had a full and fair opportunity to litigate this case in the Court of Claims. As such, defendants argue that they clearly established the threshold to dismiss plaintiffs' claims pursuant to collateral estoppel and/or *res judicata*.

In opposition to the motion, plaintiffs argue defendants' motion should be denied as the requirement for collateral estoppel and *res judicata* have not been satisfied. Plaintiffs argue that the case that was tried in the Court of Claims involved claims against the State of New York only, with no mention of the City at all. Plaintiff's assert that they were not given a full and fair opportunity to contest this matter. Specifically, plaintiffs assert that the documentary proofs referred to by the plaintiffs' expert were solely documents relating to the State of New York and the guardrail in question. Plaintiffs note that Judge Soto's determination, pending the resolution of the appeals, is based on evidence relating solely to the State of New York and Judge Soto never heard any testimony, or reviewed evidence relating to the City, nor did her ruling involve any determination against the City.

Moreover, plaintiffs argue that they were also not given a full and fair opportunity to contest this matter due to Judge Soto not allowing plaintiffs to ask their expert two questions about his opinion of the safety of the guardrails in question and what the State did or did not do. In addition, plaintiffs argue that while Judge Soto was issuing her ruling, counsel for plaintiff tried to interject and clarify on two occasions and was not allowed to do so, again not being given a full and fair opportunity. Plaintiffs further argue that Judge Soto issued an Order

Directing Judgments, in which it was incorrectly stated that both plaintiffs were rear seat passengers although the evidence presented was that plaintiff Farray was a front seat passenger, which shows that if Judge Soto was incorrect as to this basic fact, she could have been incorrect as to her findings concerning liability.

### ANALYSIS

Under CPLR 3211 (a)(5), party may move for judgment dismissing one or more causes of action asserted against it based on the doctrines of res judicata or collateral estoppel.

“Res judicata or claim preclusion precludes successive litigation based on the same transaction or series of connected transactions if there is a valid and enforceable judgment and the party against whom the doctrine is invoked was a party to the previous action, or in privity with a party” (*Matter of Silvar v. Commissioner of Labor of the State of N.Y.*, 175 AD3d 95, 103 [1<sup>st</sup> Dept 2019]).

“Collateral estoppel, or issue preclusion, ‘precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided again that party...whether or not the tribunals or causes of action are the same’” (*Venture Group, LL Finnerty*, 80 AD3d 474, 475 [1<sup>st</sup> Dept 2011] [internal citations omitted]).

“[T]he issue must have been material to the first action or proceeding and essential to the decision rendered therein...and it must be the point actually to be determined in the second action or proceeding such that ‘a different judgment in the second would destroy or impair rights or interests established by the first’” (*Ryan v. New York Telephone Co.*, 62 NY2d 494, 500-501 [1984] [internal citations omitted]). Plaintiff has to also have had a full and fair opportunity to litigate the issue in the earlier action, and this burden rests upon the opponent (*id.* at 501).

Here, defendants demonstrated the causes of action in this action arise out of the same transaction as the causes of action asserted against the State in the Court of Claims action. Further, the theories of liability are identical in the two actions. Critically, this action seeks a determination on the exact same issues and on the exact same facts as those already litigated in the Court of Claims, and is thus barred by the doctrines of collateral estoppel and/or res judicata.

The plaintiffs had a full and fair opportunity to litigate the identical issue concerning the negligent design, construction, maintenance, and control of the subject roadway, including the median barrier and/or guardrail that separates eastbound and westbound traffic on the Grand Central Parkway, Queens, New York at or near 188<sup>th</sup> Street in the Court of Claims. Accordingly, the court's ruling that the guardrails were not unsafe, and the vehicle driven by the drunk driver was the sole cause of the accident is binding against them in this action (*Harrison v. Stanton*, 253 AD2d 537, 538 [2d Dept 1998]).

While the City was not a party to the Court of Claims case, to establish privity, the party seeking to apply the doctrine of res judicata need only establish that "the connection between the parties must be such that the interests of the nonparty can be said to have been represented in the prior proceeding." (*See Green v. Santa Fe Indus.*, 70 NY2d 244, 253 [1987]). Here, such privity has been demonstrated and there can be no doubt that the interests of the City were represented in the prior action.

Specifically, Highway Law §§ 349-b and (c)(3) state that the State is responsible for the construction and maintenance of such highways, while the City shares responsibility for their maintenance. The Grand Central Parkway is specifically enumerated as one such highway (see Highway Law § 349(f)). As such, the same records about the construction, design and maintenance of the Parkway utilized in the Court of Claims case are the same as would be

relevant to this case, the cases share the same issues/allegations relating to purported design negligence, and the finding that the sole proximate cause of plaintiff’s injuries were the actions of another driver is dispositive here.

The fact that there is a pending appeal of the decision in the Court of Claims matter is inconsequential (see *Matter of Amica Mut. Ins. Co. (Jones)*, 85 AD2d 727, 728 [2d Dept 1981] [“The rule in New York . . . is that the mere pendency of an appeal does not prevent the use of the challenged judgment as the basis of collaterally estopping a party to that judgment in a second proceeding”]). Moreover, the issues plaintiffs raise regarding various rulings and the decision in the Court of Claims matter are more appropriately made on the appeal.

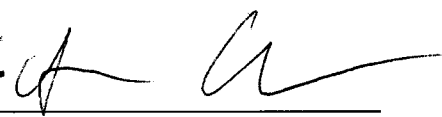
Accordingly, it is hereby

**ORDERED**, defendants’ motion to Amend their Answer to assert the affirmative defense of collateral estoppel and/or res judicata is granted on consent; and it is further

**ORDERED**, the Complaint is dismissed against the City pursuant to CPLR 3211 (a)(5) for the reasons set forth above.

This constitutes the Decision of the Court.

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



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ARIEL D. CHESLER, J.S.C.

1/12/2026

\_\_\_\_\_  
DATE

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