

Santana v New York City Tr. Auth.
2026 NY Slip Op 30240(U)
January 23, 2026
Supreme Court, New York County
Docket Number: Index No. 155400/2020
Judge: Richard Tsai
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI PART 21

Justice

-----X

GENNY SANTANA,
Plaintiff,
- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSIT AUTHORITY, MTA BUS
COMPANY, and CHRISTIAN A TROY,
Defendants,

INDEX NO. 155400/2020

MOTION DATE 1/06/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 31 - 50, 52 - 54 were read on this motion to/for JUDGMENT - SUMMARY.

In this action, plaintiff Genny Santana alleges that, while he was operating his motor vehicle, a New York City bus made an unsafe lane change and collided with his vehicle.

Now, plaintiff moves for summary judgment in his favor as to the issue of liability, and seeks to dismiss the first, third, and fifth affirmative defenses asserted by the New York City Transit Authority (NYCTA), Metropolitan Transit Authority (MTA), MTA Bus Company (Bus Company), and Christian Troy (collectively, Transit Defendants) (notice of motion [NYSCEF Doc. No. 31] at 1). Transit Defendants oppose the motion.

BACKGROUND

In this action, plaintiff testified three separate times regarding the incident. Plaintiff first appeared for a statutory hearing requested by the City of New York, a non-party to this action. Subsequently, plaintiff appeared for another statutory hearing requested by defendant NYCTA. Lastly, plaintiff appeared for an examination before trial where he was examined by defendant NYCTA. In addition to plaintiff's testimonies, plaintiff also submitted an affidavit, video evidence from the bus, photographs taken from the scene, and investigative reports conducted after the collision.

At his statutory hearing with the non-party City of New York,¹ plaintiff testified that, at the time of the incident, he was employed as a taxi driver working for Ultra

¹ The transcript of the statutory hearing taken by the City of New York would not be admissible against Transit Defendants because they were not present at that that hearing (*Claypool v City of New York*, 267 AD2d 33, 35 [1st Dept 1999]). However, because Transit Defendants did not object to the admissibility of the City's statutory hearing transcript, the court will consider the testimony.

Dispatcher (plaintiff's Exhibit B [NYSCEF Doc. No. 37] City Statutory tr. at 10, lines 2 – 14). Prior to the incident, plaintiff stated that he dropped a passenger off at the Presbyterian Hospital on 165th Street before returning to his house in the Bronx, traveling northbound on Broadway which had two lanes of traffic in each direction (*id.* at 19, line 22 through 20, line 25). Plaintiff further stated that, as he was driving, “the bus was stopped. I was going straight. It just came out and that’s how it happened” (*id.* at 21, lines 20 – 22). Plaintiff stated that he was wearing his seatbelt at the time of the incident (*id.* at 25, lines 14 – 16).

At plaintiff's statutory hearing with the New York City Transit Authority, he confirmed that, at the time of the incident, he worked as a taxi driver where he “pick[ed] up passengers and I have [sic] them to distinct destinations” (plaintiff's Exhibit E [NYSCEF Doc. No. 40] Transit Statutory tr. at 10, lines 5-8). Immediately prior to the incident, plaintiff stated that he was working in the scope of his employment as he dropped off passengers at 165th Street and Broadway before returning to the Bronx (*id.* at 18, lines 4 – 9). While driving to the Bronx, plaintiff stated, “I was going through the light, it was green. The bus was picking up passengers, and then very quickly, without putting on his lights he came into the lane, and he hit me very hard on the passenger side” (*id.* at 19, lines 9 – 12). Plaintiff testified to wearing a seatbelt at the time of the incident (*id.* at 23, lines 9 – 11).

At an examination before trial, plaintiff testified that “I was on Broadway. I left that passenger on Broadway on the north side. I made a turn. I made a left on 165th. Then I made a left on the south. Then I took the middle lane when the bus hit me strongly” (plaintiff's exhibit G [NYSCEF Doc. No. 42] Santana EBT tr. at 33, lines 18 – 22). In describing the collision, Santana stated that “the left front” of the bus collided with plaintiff's vehicle, when “the bus came from the right side and hit me on the right side” (*id.* at 35, lines 9 – 11).

Plaintiff summarized the sequence of events in a similar manner through an affidavit. Specifically, plaintiff stated that as he “was driving past the bus at the speed of traffic, the bus failed to yield to my right of way, pulled out of the parking lane bus stop and the front driver's side of the bus struck the passenger side of my vehicle” (Plaintiff's Affidavit [NYSCEF Doc. No. 32] ¶6).

According to the Police Report, the “driver of vehicle 2 states as he was driving straight ahead when driver of vehicle 1 came out of spot without putting a signal and side swiped his vehicle” (plaintiff's Exhibit H [NYSCEF Doc. No. 43] Police Report at 1).² The report further states that the “driver of vehicle 1 states as he was pulling out of his spot changing lanes when driver of vehicle 2 sped up and side swiped his vehicle” (*id.*).

The MTA Supervisor Accident Report states that the “driver of auto stated that while traveling straight [] second lane of traffic he tried to avoid bus pulling out of bus

² It would appear that the Police Report is uncertified, and, therefore, would be “inadmissible hearsay” (*Coleman v MacClas*, 61 AD3d 569, 569 [1st Dept 2009]). However, as Transit Defendants do not object to the Police Report's admissibility, the court will consider it.

stop, and the bus struck [sic] his car” (plaintiff’s Exhibit M [NYSCEF Doc. No. 48] MTA Supervisor Accident Report, at 2). The MTA Incident report states “while exiting ... bus stop at W 165th and Broadway, auto struck left side of bus” (plaintiff’s Exhibit O [NYSCEF Doc. No. 50] MTA Incident Report, at 2).

Plaintiff also submits photographs taken after the incident, which show the front driver side of the bus pressed against the front passenger door of plaintiff’s car and the bus angling from right lane into the middle lane of travel (plaintiff’s Exhibit K [NYSCEF Doc. No. 46], Defendants’ Photos).³

Lastly, in support of this motion, plaintiff submitted video footage from the bus as well. In the video, the bus can be seen pulling away from the bus stop and colliding with plaintiff’s vehicle as he is driving on the bus’s left-hand side. At 11:48:26, in camera 4, the video depicts the bus entering plaintiff’s lane of travel and striking plaintiff’s vehicle (plaintiff’s Exhibit I [NYSCEF Doc. No. 44] Bus Video Footage).

DISCUSSION

“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*, 44 NY3d 329, 334 [2025] [internal citations omitted]).

Here, plaintiff “established prima facie entitlement to judgment as a matter of law by submitting evidence that [defendant’s] unsafe lane change constituted negligence per se and was the sole proximate cause of the collision” (*Alcantara v Toro*, 238 AD3d 535, 535 [1st Dept 2025]). In this action, plaintiff has “made a prima facie showing of entitlement to summary judgment by submitting ... deposition testimony indicating that the accident occurred when [defendant] pulled out of a parked position and into a lane of moving traffic” (*Chavis v Zorrilla*, 222 AD3d 581, 581 [1st Dept 2023]). In this instance, defendant bus driver, Christian Troy, “had a duty not to enter a lane of moving traffic until it was safe to do so, and [the] failure to heed this duty constitutes negligence per se” (*id.*). As plaintiff stated several times throughout the course of discovery, plaintiff was driving straight forward in his own lane when the bus operator unexpectedly attempted to enter his lane of travel. Ultimately, “defendant’s failure to obey the traffic laws that required [him] to yield the right of way to plaintiff was the sole proximate cause of the collision” (*Baxter v Gosh*, 241 AD3d 1144, 1144 [1st Dept 2025] [internal quotations omitted]).

³ The court notes that plaintiff asserts that these photograph were “taken at the scene and exchanged by Defendants” (affirmation in support of motion [NYSCEF Doc. No. 33]), and Transit Defendants do not dispute this characterization or object to their admissibility.

Preliminarily, Transit Defendants' argument that this motion should be "denied as premature as Defendant Bus Operator Christian Troy has not been deposed" is unavailing, as any explanation for why Troy merged into the plaintiff's lane of travel is within Troy's own personal knowledge (see *Stephenson v New York City Tr. Auth.*, 226 AD3d 546 [1st Dept 2024]; *Ahmad v Behal*, 221 AD3d 558, 559 [1st Dept 2023]). The mere hope that additional discovery may lead to sufficient evidence to defeat a summary judgment motion is insufficient to deny such a motion" (*Singh v New York City Hous. Auth.*, 177 AD3d 475, 476 [1st Dept 2019]).

Transit Defendants also argue that "plaintiff's own testimony establishes a non-negligent explanation for the happening of the accident that underlies this matter, i.e. that plaintiff made an illegal u-turn prior to his car coming in to contact with the bus in question" (affirmation in opposition to motion [NYSCEF Doc. No. 52] ¶ 4). At best, this would create an issue of fact as to plaintiff's comparative fault, which is not a basis to deny summary judgment in plaintiff's favor as to liability (*Rodriguez v City of New York*, 31 NY3d 312, 315 [2018]).

However, the video of accident ultimately shows that there is no issue of fact as to plaintiff's comparative fault either (see *Kanuteh v New York City Tr. Auth.*, 231 AD3d 540, 541 [1st Dept 2024] [affirming summary judgment in favor of defendants where plaintiff's testimony was "contradicted by the video evidence establishing that the bus never left its lane of travel and that the truck started to leave its parked spot"]). Rather, the video clearly shows that plaintiff was driving his vehicle in a straight line in the middle lane for at least 5 seconds before Transit Defendants' bus merged into plaintiff's lane striking plaintiff's vehicle. Plaintiff's vehicle can be seen traveling in the lane next to the bus, from camera 5, beginning at 11:48:21 (plaintiff's Exhibit I [NYSCEF Doc. No. 44] Bus Video). Subsequently, from camera 4, the collision can be seen as Transit Defendant's bus attempts to change lanes at 11:48:26 (*id.*). At most, plaintiff's supposed illegal u-turn "merely furnished the occasion" for the Transit Defendants' bus to negligently merge into plaintiff's vehicle (*Dunlap v City of New York*, 186 AD2d 782, 783 [2d Dept 1992], quoting *Sheehan v City of New York*, 40 NY2d 496, 503 [1976]). In other words, plaintiff's U-turn did no more to cause the collision other than placing him in that location at the time.

Thus, as plaintiff has demonstrated an absence of negligence and showed that Transit Defendant's actions were the sole proximate cause of the collision, the first affirmative defense of culpable conduct is dismissed as well.

The third affirmative defense of the emergency doctrine is also dismissed. Here, any "emergency" that Troy faced was clearly of his "own making" due to the fact that he attempted to change lanes before ascertaining that it was safe to do so (*Miller v Silvarole Trucking Inc.*, 211 AD3d 1544, 1545 [4th Dept 2022]; see also *Jablonski v Jakaitis*, 85 AD3d 969, 970 [2d Dept 2011] ["Without having perceived or reacted to any emergency, the defendant may not rely on the emergency doctrine to excuse her conduct"]).

Moreover, plaintiff has demonstrated that the fifth affirmative defense should be dismissed because plaintiff has provided undisputed testimony that he did in fact wear his seatbelt (*Bailey v Gabrielli Truck Leasing LLC*, 210 AD3d 573, 574 [1st Dept 2022] [affirming dismissal of defendant’s affirmative defense of plaintiff’s failure to use a seatbelt where plaintiff submitted “unrefuted testimony was that she was wearing a seatbelt at the time of 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 plaintiff suffered a serious injury 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]). Therefore, the court denies the branch of plaintiffs seeking to “set[] this matter down for an assessment of damages” (notice of motion [NYSCEF Doc. No. 31] at 1).

CONCLUSION

Accordingly, it is hereby **ORDERED** that plaintiff’s motion for summary judgment is **GRANTED TO THE EXTENT** that plaintiff is granted partial summary judgment as to liability against defendants; and it is further

ORDERED that Transit Defendant’s first, third, and fifth affirmative defenses (seatbelt, emergency doctrine, culpable conduct) are all **DISMISSED**; and it is further

ORDERED that, within 60 days after entry of this decision and order, plaintiff’s counsel is directed to retrieve the flash drives containing video footage from IAS Part 21, 80 Centre Street Room 280, and plaintiff’s counsel and defendants’ counsel are directed to preserve the video footage intact that each had submitted to the court, pending the outcome of any appeal of this decision and order, or if no appeal is taken, until after the time to appeal from this decision and order has expired.⁴

The parties are reminded that this matter is scheduled for an in-person status conference before this court (Part 21) in courtroom **280** at 80 Centre Street, New York, NY on **June 4, 2026, at 2:15 PM.**

ENTER:



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1/23/2026

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
					OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE

⁴ If the video footage is not retrieved within 60 days after entry of this decision, court staff may then discard any unretrieved video footage.