

Donovan v New York City Tr. Auth.
2026 NY Slip Op 30309(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 150628/2022
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

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BRIANA DONOVAN,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSIT AUTHORITY and KI-MELB
WASHINGTON,

Defendants.

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INDEX NO. 150628/2022
MOTION DATE 04/08/2025
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 34- 43
were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is hereby **ORDERED** that plaintiff's motion for summary judgment is **GRANTED TO THE EXTENT** that plaintiff is granted partial summary judgment in his favor as to liability against defendants New York City Transit Authority and Ki-Melb Washington only, who are jointly and severally liable, and the motion is otherwise denied.

In this action, plaintiff Briana Donovan alleges that on February 5, 2021 at approximately 7:30 p.m., she was sitting in her stopped motor vehicle on east 120th Street, when it was struck by a bus operated by Ki-Melb Washington and owned by defendant New York City Transit Authority (NYCTA) and Metropolitan Transportation Authority (MTA) (exhibit A in support of motion [NYSCEF Doc. No. 38], complaint ¶¶ 44-46). In their answer, defendants admit that the subject bus was owned by NYCTA and operated by Washington within the scope of his employment with NYCTA (*id.*, answer ¶ 3).

On this motion, plaintiff has established her prima facie entitlement to summary judgment on the issue of liability by providing her sworn testimony that her vehicle was struck in the rear while it was stopped (exhibit C in support of motion [NYSCEF Doc. No. 40], plaintiff's EBT at 23, line 10 through 24, line 13, at 28, lines 8-16, at 43, lines 10-12; *Alvarez v Bracchitta*, 210 AD3d 458, 459 [1st Dept 2022] ["A rear-end collision with a stopped vehicle, or one slowing down, establishes a prima facie case of negligence by the operator of the rear-ending vehicle, unless he or she gives an adequate nonnegligent explanation for the accident"]).

In opposition, defendants first argue that the motion should be denied as "premature" because Washington had not yet been deposed and "given the opportunity

to describe the accident events” (affirmation in opposition [NYSCEF Doc. No. 42]). The court rejects this argument, as any explanation for why Washington struck plaintiff’s vehicle was within Washington’s own personal knowledge and could have been presented on this motion via an affirmation by Washington (see *Stephenson v New York City Tr. Auth.*, 226 AD3d 546 [1st Dept 2024]; *Ahmad v Behal*, 221 AD3d 558, 559 [1st Dept 2023]).

Defendants further argue that plaintiff’s vehicle was supposedly stopped in a “no standing” area and that this fact, paired with a curve in the roadway around where the bus approached plaintiff, raises a triable issue of fact, requiring denial of the motion (affirmation in opposition to motion ¶¶ 7-8; see also exhibit B in support of motion [NYSCEF Doc. No. 39], Supervisor’s Accident/Incident Investigation Report at 2 [stating that plaintiff’s car “was second car of two that were in a no standing area illegally parked/unoccupied. This was location of impact”]; plaintiff’s EBT at 22, lines 9-17, at 23, line 2 through 24, line 4, at 46, lines 21-24 [discussing curve]).

However, this does not overcome the presumption of negligence, as Washington has not put forward a non-negligent explanation for striking the rear of plaintiff’s stopped vehicle: i.e. that the accident was not proximately caused by his failure “to control his vehicle and to see that which, under the circumstances, he should have seen by the proper use of his senses” (*Cortes v Whelan*, 83 AD3d 763, 764 [2d Dept 2011]).¹

At best, the placement of plaintiff’s stopped car in an alleged “no standing” zone near a curve in the roadway raises 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]).

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]).

As to plaintiff’s comparative fault, plaintiff asserts that the first affirmative defense of comparative fault should also be dismissed. Plaintiff argues that defendants fail to raise a triable issue of fact in this regard because “there is no evidence or sworn testimony that would substantiate the claim that Plaintiff was illegally parked” (reply affirmation in further support of motion [NYSCEF Doc. No. 43] ¶ 10). Plaintiff argues that the Supervisor’s Accident/Incident Investigation Report is “not properly authenticated” and that the “the statements made therein, when not an admission against a party’s own interest, is inadmissible as hearsay” (*id.* ¶ 9).

¹ As NYCTA has admitted that it owned the bus and that Washington was operating the bus within the scope of his employment, NYCTA is vicariously liable for Washington’s negligence under Vehicle and Traffic Law § 388 and the doctrine of *respondeat superior*, respectively (see *Murdza v Zimmerman*, 99 NY2d 375, 379 [2003]; *Riviello v Waldron*, 47 NY2d 297, 302 [1979]; *Ryga v New York City Tr. Auth.*, 17 AD3d 561, 562 [2d Dept 2005]).

However, plaintiff annexed the Supervisor's Accident/Incident Investigation Report as exhibit B in support of this motion and thus arguably "relied upon the report and waived any hearsay or authentication objection" (*Cruz v Skerritt*, 140 AD3d 554, 554 [1st Dept 2016]). It is true that the Appellate Division, First Department has recently, distinguished *Cruz v Skerritt*, by holding that a party's mere submission of a document as an exhibit "to their summary judgment motion did not preclude them from challenging its admissibility because they did not rely on it to support the motion" (*Rondon v 328 W. 44 St. LLC*, 243 AD3d 493, 493 [1st Dept 2025]). However, plaintiff cited the Supervisor's Accident/Incident Investigation Report for the proposition that defendants' bus "came around a curve in the roadway, and struck the driver side of plaintiff's parked vehicle, dragging it several feet in the process. See Exhibit B" (memorandum in support of motion [NYSCEF Doc. No. 35] ¶ 9).

Furthermore, even if this court were to exclude the statement in the Supervisor's Accident/Incident Investigation Report that plaintiff's vehicle was in a "no standing" area, Exhibit B also includes photographs that appear to show plaintiff sitting in her car next to a "no standing" sign after the accident (see exhibit B, photographs at PDF pages 37, 41-42 and 47 of 48). During plaintiff's deposition, plaintiff appeared to recognize certain photographs that were taken of her in her car after the accident (plaintiff's EBT at 19, lines 2-24; at 23, line 2 through 24, line 10). While plaintiff's deposition transcript does not clearly establish that the photographs submitted on this motion were the same as those shown to plaintiff at her deposition, the court finds that, here, such testimony together with plaintiff's submission of the documents submitted as exhibit B, establishes that facts essential to justify opposition to plaintiff's motion exist, which warrant denial of summary judgment dismissing the affirmative defense of culpable conduct based on the contention that plaintiff was not illegally parked in a "no standing zone."²

The issue of whether an illegally parked car was not, as a matter of law, a proximate cause of a collision presents a close question. On the one hand, as plaintiff points out, "[e]ven if a vehicle is illegally parked, that fact, standing alone 'does not automatically establish that such parking was the proximate cause of the accident'" (memorandum in support of motion ¶ 16, quoting *Cervera v Moran*, 122 AD3d 482, 483 [1st Dept 2014]).

On the other hand, "[i]t is well-settled that a vehicle improperly double-parked in violation of applicable traffic regulations may be found to be at fault in connection with a rear-end accident, since 'a reasonable jury could find that a rear-end collision is a reasonably foreseeable consequence of double parking on a busy Manhattan street'" (*Nadella v City of New York*, 161 AD3d 412, 412 [1st Dept 2018][internal citations and emendation omitted]; *White v Diaz*, 49 AD3d 134, 139-40 [1st Dept 2008] ["here a reasonable jury might conclude that if the Nunez van had pulled over to the curb or into a nearby parking lot to wait, it would not have been in the path of the Diaz van and plaintiff would not have been injured"]). Thus, the case law on this issue is nuanced, as

² The court notes that plaintiff testified that her vehicle moved an unknown distance after it was hit, but that she did not move her vehicle after the accident (plaintiff's EBT at 16, line 13 through 17, line 3).

the outcome is often heavily dependent on the particular facts and procedural posture of each case.

In this case, as discussed above, there was a curve in the road nearby (plaintiff's EBT at 22, lines 9-17, at 23, line 2 through 24, line 4, at 46, lines 21-24), and plaintiff's vehicle was turned off without her hazard or break lights at nighttime (plaintiff's EBT at 67, lines 2-9). Viewing the circumstantial evidence in the light most favorable to the non-movant, it is reasonable to infer that the curve and the lack of any hazard or brake lights being on may have obscured the visibility of plaintiff's vehicle (compare with *O'Connor v Easyride, Inc.*, 26 AD3d 263, 264 [1st Dept 2006] ["issues of fact remain as to whether this truck was illegally and unsafely double-parked, thus contributing to the multi-vehicle accident by, inter alia, obstructing the lane of traffic and the visibility of the intersection on an uphill curve ahead"]). The record does not establish that the bus operator had clearly seen plaintiff's stopped vehicle, or that the bus operator, having seen plaintiff's vehicle, had decided to proceed around the vehicle and had misjudged the distance from a stationary vehicle.

Because "[s]ummary judgment should not be granted . . . where the existence of a factual issue is arguable" (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25 [2019]), the branch of plaintiff's motion seeking dismissal of the first affirmative defense of comparative fault is denied. In this court's view, on the record presented, "the connection between the parking violation and the happening of the accident is logical and immediate enough to present a factual question on the issue of proximate cause which should be determined by a jury" (*O'Connor v Pecoraro*, 141 AD2d 443, 445 [1st Dept 1988]).

Further, to the extent that plaintiff also sought summary judgment on liability as against MTA, that branch of the motion is denied. Plaintiff did not submit any evidence either that the MTA owns the bus at issue, or that Washington was an employee of the MTA.³

ENTER:



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<u>1/28/2026</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 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

³ Although not raised by defendants, the court notes that "[i]t is well settled, as a matter of law, that the functions of the MTA with respect to public transportation are limited to financing and planning, and do not include the operation, maintenance, and control of any facility" (*Delacruz v Metropolitan Transp. Auth.*, 45 AD3d 482, 483 [1st Dept 2007]; see also *Archer v New York City Tr. Auth.*, 187 AD3d 564 [1st Dept 2020]).