Ramos v New York City Tr. Auth.
2026 NY Slip Op 30561(U)
February 11, 2026
Supreme Court, New York County
Docket Number: Index No. 451766/2023
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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REINA RAMOS,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA BUS COMPANY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, and JOHN OR JANE DOE,

Defendants.

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INDEX NO. 451766/2023

MOTION DATE 01/09/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 50, 73-90, 92-96 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, it is **ORDERED** that the branch of plaintiff's motion for renewal of plaintiff's prior motion to strike the answer of defendants is **DENIED**; and it is further

ORDERED that the branch of plaintiff's motion to deem that defendants have admitted the allegations set forth in plaintiff's notice to admit dated September 13, 2024 (NYSCEF Doc. No. 82) is **DENIED**, without prejudice to an application before the trial judge; and it is further

ORDERED that the branch of plaintiff's motion to strike the answer of defendants due to alleged spoliation of Bus No. 8397 is **DENIED**; and it is further

ORDERED that the branch of plaintiff's motion to substitute Santiago Ortiz in lieu of defendant "John or Jane Doe" is **GRANTED WITHOUT OPPOSITION**; and it is further

ORDERED that the caption is amended to read as follows:

REINA RAMOS,

PLAINTIFF,

AGAINST

NEW YORK CITY TRASNIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, MTA BUS COMPANY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, and SANTIAGO ORTIZ,

DEFENDANTS.

and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*[1] (accessible at the "E-Filing" page on the court's website at https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf); and it further

ORDERED that counsel are reminded to appear for a status conference **in person** in Room **280**, 80 Centre Street, New York, New York, on **February 19, 2026**, at **2:15 PM**.

On May 1, 2022, at approximately 8:30 a.m., plaintiff was allegedly attempting to exit the rear door of an M100 Bus (Bus No 8397) at a bus stop located on the west side of Amsterdam Avenue, between West 161st Street and West 162nd Street, when the doors closed on her, causing injury (affirmation of plaintiff's counsel in support of motion at 3 [NYSCEF Doc. No. 74]).

[1] Pursuant to Section J, in order for the Clerk of the General Clerk's Office to effectuate this order, the movant must e-file a copy of the order "using the NYSCEF document type 'Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order'" and the filer must provide "as additional information (in the 'Additional Document Information' field) a brief description of the type of order being submitted (e.g., 'Order of Consolidation' . . .) (*id.*).

Likewise pursuant Section J, in order for the County Clerk to effectuate this order, the movant must serve a copy of this order on the County Clerk "by filing with NYSCEF a completed Notice to the County Clerk - CPLR § 8019 (c) (NYSCEF Form EF-22, available on the NYSCEF site)" (*id.*)

On April 18, 2024, plaintiff moved to strike the answer of defendants New York City Transit Authority, Metropolitan Transportation Authority, MTA Bus Company, and Manhattan And Bronx Surface Transit Operating Authority (collectively, the Transit Defendants), for failing to preserve video footage of the bus (*see* NYSCEF Doc. No. 30). While plaintiff's motion was pending, plaintiff's counsel received an email dated July 19, 2024 from the Transit Defendants' counsel informing plaintiff, "the bus was no longer available" (*see* plaintiff's Exhibit 5 in support of motion [NYSCEF Doc. No. 80]).

By a decision and order dated September 13, 2024, this court denied plaintiff's motion to strike the answer of the Transit Defendants (*see* plaintiff's Exhibit 6 in support of motion [NYSCEF Doc. No. 82]). This decision stated, in relevant part: "Here, plaintiff did not submit any evidence that would establish that video footage on Bus No. 8397 on May 1, 2022 existed. There is no evidence in the record that this particular bus was equipped with video recording capabilities. Plaintiff's motion was made before any party depositions were held" (*id.* at 3).

On or about the same date that the decision and order was issued, plaintiff served the Transit Defendants with a Notice to Admit that, on May 1, 2022, Bus No. 8397 operating on the M100 route between the hours of 7:00 a.m.-10:00 a.m. was equipped with operating video cameras (*see* plaintiff's Exhibit 7 in support of motion, notice to admit [NYSCEF Doc. No. 82]). On or about September 30, 2024, defendants objected to the Notice to Admit, stating in relevant part, "Clearly, whether there are cameras on a bus is improper to assert in a Notice to Admit. Plaintiff already moved for sanctions and preclusion. The court denied the motion. This is merely an attempt to document the Court's ruling. We object" (plaintiff's Exhibit 8 [NYSCEF Doc. No. 83]).

Meanwhile, at a compliance conference on June 13, 2024, the Transit Defendants admitted that the New York City Transit Authority (NYCTA) owned Bus No. 8397, and that Santiago Ortiz was a NYCTA employee acting in the scope of their employment while operating the bus (*see* NYSCEF Doc. No. 50). On October 2, 2024 the Transit Defendants produced Ortiz for a deposition (*see* plaintiff's Exhibit 10 in support of motion, Ortiz EBT [NYSCEF Doc. No. 85]).

At his deposition, Ortiz testified as follows:

24 Q. Are you familiar with the bus
25 that you were operating on May 1st, 2022?

S. ORTIZ 19
A. I don't remember.
Q. To your knowledge, the buses that you operated between March 5th, 2018 and May 1st, 2022, contained cameras; is that correct?
A. I wouldn't know.
Q. Then am I correct that you do not know whether or not the bus that you were operating on May 1st, 2022 was outfitted with cameras; is that correct?
A. Your right.

(*see* Plaintiff's Exhibit 10, Ortiz EBT at 18, lines 24-25 through 19, lines 1-12).

Plaintiff now brings a motion: (1) to renew her motion for sanctions against the Transit Defendants; (2) to deem admitted the allegations of the Notice to Admit dated September 13, 2024; (3) to strike the Transit Defendants' answer due to spoliation of the bus; and (4) for leave to amend the complaint to substitute Santiago Ortiz in lieu of defendant John or Jane Doe. The Transit Defendants oppose the motion.

Oral argument was held on April 17, 2025 on the stenographic record (Dino Apuzzo, court reporter). By an interim order dated April 17, 2025, this court directed plaintiff to a supplemental memorandum of law citing any cases for the proposition that a duty to preserve Bus No. 8397 was triggered upon service of the notices of claim or complaint in this action (*see* NYSCEF Doc. No. 90).

I. Renewal of plaintiff's prior discovery motion to strike defendants' answer and other related relief

A motion to renew under CPLR 2221 "is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]). "In general, motions for renewal should be based on 'newly discovered facts that could not be offered on the prior motion.' However, 'courts have discretion to relax this requirement and to grant such a motion in the interest of justice'" (*BLDG ABI Enters., LLC v 711 Second Ave Corp.*, 116 AD3d 617, 618 [1st Dept 2014]).

Here, plaintiff seeks renewal based on information learned from Ortiz's deposition, which had not been taken when plaintiff had previously moved to strike the Transit Defendants' answer. However, Ortiz's deposition testimony would not have altered the determination on the prior motion (CPLR 2221 [e] [2]; *see La Magica LLC v 145 Atl. LLC*, 154 AD3d 515, 516 [1st Dept 2017]). Plaintiff's counsel even admits, "we are left in the same position as we were before he was deposed" (affirmation of plaintiff's counsel in support of motion at 13).

Because Ortiz could not recall whether the bus that he was operating on May 1, 2022 was equipped with cameras, plaintiff still has not established that any video footage from the bus had actually existed that was purportedly spoliated by the Transit Defendants (*see Watson v 518 Pennsylvania Hous. Dev. Fund Corp.*, 160 AD3d 907, 909 [2d Dept 2018]; *see also State of N.Y. v 158th St. & Riverside Dr. Hous. Co., Inc*., 100 AD3d 1293, 1295–1296 [3d Dept 2012]).

Therefore, the branch of plaintiff's motion for renewal of her prior discovery motion to strike the answer of the Transit Defendants and other related relief is denied.

II. Plaintiff's Notice to Admit

> "A notice to admit is designed to elicit admissions on matters which the requesting party 'reasonably believes there can be no substantial dispute' (CPLR 3123 [a]). A notice to admit may not be utilized to request admission of material issues or ultimate or conclusory facts, or facts within the unique knowledge of other parties. Rather, it is only properly used to eliminate from trial matters which are easily provable and about which there can be no controversy. Further, because a notice to admit is not intended as simply another means for achieving discovery, it may not be used to obtain information in lieu of other disclosure devices" (*Fetahu v New Jersey Tr. Corp.*, 167 AD3d 514, 515 [1st Dept 2018] [internal quotation marks, citations, and emendation omitted]).

Here, the Transit Defendants argue that the issue of the existence and operation of video cameras on the bus is in dispute, and therefore plaintiff improperly used the notice to admit. However, they have not cross-moved for a protective order to vacate the notice to admit (*see e.g. Rosario v Gen. Motors Corp.*, 148 AD2d 108, 113 [1st Dept 1989]).

Notwithstanding the above, "[t]he question as to whether a party has rightly or wrongly declined for reasons set forth to admit or to deny an item tendered in a notice to admit is for the trial court" (*Belfer v Dictograph Products*, 275 AD 824 [1st Dept 1949]; *see also Reid v Unique Van Serv., Inc.*, 284 AD2d 520, 521 [2d Dept 2001] ["The Supreme Court erred in deeming the appellants to have admitted the facts set forth in a notice to admit served on them by the plaintiff. The only remedy for an alleged unreasonable denial is an award of fees and costs pursuant to CPLR 3123(c)"]; McKinney's Cons Laws of NY, CPLR 3213, Advisory Comm Note ["There has been

some complaint about § 322, which does not permit an application before trial to determine whether a request or a refusal to admit is justified. The Judicial Council was aware of the problem but decided not to allow such applications"]).

Thus, the branch of plaintiff's motion to have the allegations of plaintiff's notice to admit deemed admitted is denied, without prejudice to seeking appropriate relief, pursuant to CPLR 3123 (c), before the trial judge.[2] This court therefore does not reach the issue of whether plaintiff had improperly used the notice to admit.

III. Alleged Spoliation of the Bus

Plaintiff's counsel argues that, "[d]ue to defendants' spoliation of the subject bus, plaintiff is prevented from challenging defendants' claim about the operation of the rear doors" (affirmation of plaintiff's counsel in support of motion ¶ 18).[3] Consequently, plaintiff seek an order striking the answer of the Transit Defendants. Alternatively, plaintiff seeks an order precluding them from testifying at trial as to: (1) the operation of the rear doors; (2) the bus operator's actions in connection with the operation; and (3) plaintiff's actions in exiting the bus; and an order prohibiting defendants from cross-examining plaintiff about how the accident happened (*see* affirmation of plaintiff's counsel in support of motion at 23).

"A party that seeks sanctions for spoliation of evidence must show that the party having control over the evidence possessed an obligation to preserve it at the time of its destruction" (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543, 547-48 [2015] [internal quotation marks and citations omitted]).[4] "In the absence of pending litigation or notice of a specific claim, a defendant should not be sanctioned for discarding items in good faith and pursuant to its normal business practices" (*Conderman v Rochester Gas & Elec. Corp.*, 262 AD2d 1068, 1069 [4th Dept 1999]).

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[2] The propriety of a notice to admit can also be determined if plaintiff should move for summary judgment and rely upon the notice to admit as proof (*see e.g. Village of Malone v Stone Mtn. Prime, LLC*, 204 AD3d 1148, 1149 [3d Dept 2022]).

[3] According to plaintiff's expert, Jason Felix, the model of the bus that Ortiz was operating has a lever that is operated by the bus operator to open the doors, which can move either upward and downward to open the doors (*see* plaintiff's Exhibit 11, affirmation of Jason Felix [NYSCEF Doc. No. 86]). Felix contends, "many bus operators will move the lever from the two position directly into the middle 'zero' position to close the front and rear doors quickly so that they can move away from the bus stop as soon as possible, regardless of whether the passengers are exiting the rear doors" (*id.*). However, at his deposition, Ortiz denied having any control over the closing of the rear doors of the bus (*see* Ortiz EBT, at 45, lines 11-17).

[4] The Transit Defendants' counsel had no knowledge of the date when the bus at issue became "unavailable." It is still unclear whether the bus at issue had, in fact, been discarded or disposed as plaintiff's counsel asserts.

Here, plaintiff appeared to argue at oral argument that the notices of claim or complaint in this action that were served upon the Transit Defendants triggered their obligation to preserve the bus at issue.

The only case that plaintiff cites for such a proposition is *Perez v New York City Transit Authority* (2009 NY Slip Op 30696[U] [Sup Ct, NY County 2009], *affd as mod.* 73 AD3d 529 [1st Dept 2010]). There, a passing Transit Authority bus allegedly crushed the plaintiff's hand as he opened the driver's side door of his truck in the direction of traffic. The plaintiff moved for an order striking the defendants' answer due to defendants' repeated failure to comply with discovery orders. Several status conference orders directed defendants to produce, among other things, certain patrol logs, some of which were destroyed due to a ceiling leak of the storage facility where they were kept.

Supreme Court granted the plaintiff an adverse inference at trial as to the destroyed documents and imposed a monetary sanction of $2,500. Supreme Court reasoned, "because Kelleher's signature appeared on the supervisor's accident crime investigation report in March 2005, and plaintiff filed a Summons and Complaint in May 2006 (and, presumably, a Notice of Claim earlier than that), the duty to preserve his patrol log attached much earlier than the date of the order" (*id.*). On appeal, the Appellate Division, First Department modified the decision below to increase the sanction to $7,500, and otherwise affirmed the decision.

However, *Perez* did not address the issue of whether a duty to preserve to the bus had been triggered upon service of the notices of claim. At best, *Perez* implicitly held that there was a duty to preserve patrol logs about the incident triggered when the complaint was filed.

Unlike *Perez*, plaintiff is not arguing for preservation of documentary evidence about the bus incident, but rather the bus itself. In the absence of appellate authority or even persuasive authority, this court declines to hold that, as a matter of law, the notices of claim or the complaint served upon the NYCTA—the admitted owner of the bus—triggered a duty to preserve Bus No. 8397 itself. Additionally, the notices of claim in this case allege operator error, not a mechanical defect—that the bus operator "negligently and without warning closed said doors on her shoulders" (*see* plaintiff's supplemental Exhibit 1, notices of claim [NYSCEF Doc. No. 93]). Thus, given the allegations of human operator error, it would not have been reasonable for the Transit Defendants to assume that the bus itself should have been preserved for the purpose of inspecting either the door closing mechanism, or for the presence of video cameras.

Furthermore, assuming, for the sake of argument, that the NYCTA was under a duty to preserve the bus itself, "[i]n imposing spoliation sanctions, 'courts possess broad discretion to provide proportionate relief to a party deprived of lost or destroyed evidence'" (*AIG Prop. Cas. Co. v MTS Power Sys.*, 231 AD3d 591, 592 [1st Dept 2024]). Here, the court notes that striking the answer of the NYCTA is a disproportionate sanction for the purported spoliation of the bus itself. To the extent that

plaintiff argues that preservation of the bus was necessary to preserve video footage, plaintiff has obtained video footage of the incident from a security camera from a store directly in front of the bus stop (*see* plaintiff's Exhibit 1 in support of motion, YouTube link to footage [NYSCEF Doc. No. 76]).[5]

Thus, the branch of plaintiff's motion to strike the answer of the Transit Defendants and for other related relief due to spoliation of the bus is denied.

IV. Amendment of the Caption

The branch of plaintiff's motion to amend the caption to substitute Santiago Ortiz in lieu of defendant "John or Jane Doe" is granted without opposition from the Transit Defendants (*see* CPLR 1024). "CPLR 1024 requires that all proceedings must be in the defendant's true name from the point in time when it is ascertained" (Vincent C. Alexander, Prac Commentaries, McKinney's Cons Laws of NY, CPLR 1024).

To be clear, in granting leave to amend, the court has not opined on whether Santiago Ortiz had been properly served. The Transit Defendants' counsel has not entered an appearance on Ortiz's behalf.

This constitutes the decision and order of the court.

ENTER:

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2/11/2026
DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**

[5] Plaintiff's counsel asserts that "video from cameras on the bus which would show what SANTIAGO ORTIZ did in relation to closing the rear doors when the subject accident occurred" (affirmation of plaintiff's counsel in support of motion at 11). However, there is nothing in the record to corroborate the assertion of plaintiff's counsel that, had the bus been equipped with video cameras, there would have been a camera view that would have shown the bus operator's use of the door controls.