

Bartosiewicz v Metropolitan Transp. Auth.
2026 NY Slip Op 30593(U)
February 11, 2026
Supreme Court, Kings County
Docket Number: Index No. 4167/2013
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 4167/2013
Motion Date: 12-8-25
Mot. Seq. Nos.: 10 , 11

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GRZEGORZ M. BARTOSIEWICZ, DECEASED BY
THE ADMINISTRATOR DE BONIS NON MARIA
BARTOSIEWICZ AND MARIA BARTOSIEWICZ,
INDIVIDUALLY,

Plaintiffs,

-against-

DECISION/ORDER

METROPOLITAN TRANSPORTATION AUTHORITY,
NEW YORK CITY TRANSIT AUTHORITY AND
RANDOLPH CARR,

Defendants.

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The following papers, which are e-filed with NYCEF as items 50-93, were read on this motion:

In this wrongful death action, in Motion Sequence #10, defendants Metropolitan Transportation Authority, New York City Transit Authority (NYCTA), and Randolph Carr move for an order: 1) pursuant to pursuant to CPLR §3212, granting summary judgment as to all defendants on the issue of liability and dismissing plaintiff’s complaint as asserted against them. Plaintiffs, Grzegorz M. Bartosiewicz, Deceased by the Administrator De Bonis Non-Maria Bartosiewicz, and Maria Bartosiewicz, Individually, in Motion Sequence 11, cross-move for an Order striking the answer of the defendants due to the spoliation of evidence and/or imposing such spoliation sanctions as the Court deems just.

BACKGROUND

This wrongful death action arises from a subway accident on March 9, 2012, at approximately 9:30 P.M. at the Morgan Avenue station in Brooklyn. The decedent was struck by a southbound "L" train operated by defendant Randolph Carr. Prior to the contact, the operator of a northbound "L" train, Ronald Tull, observed the decedent on the northbound tracks. Tull testified that he immediately applied his emergency brakes and stopped without hitting the decedent. Within seconds of stopping, Tull observed the decedent cross over to the southbound tracks and then notified the Rail Control Center (RCC) via radio that a person was on the tracks. This information was transmitted over the air.

Just prior to the accident, Defendant Carr was operating his train and was approaching the Morgan Avenue station from the southbound direction. Carr testified that when his train was two to three car lengths into the station, he saw the decedent "darting" across the southbound tracks approximately ten feet in front of his train. Carr applied the emergency brakes, but the train struck the decedent.

Central to this dispute is the timing of the events. Plaintiffs rely on a NYCTA Memorandum and a Customer Unusual Occurrence Report stating that the decedent was reported on the tracks at 9:48 p.m., a report which was transmitted over the air, and that the decedent was struck at 9:51 p.m. The Report suggests a three-minute interval. Defendants contend this three-minute gap actually represents the duration of the radio call between Tull and the RCC before the information was transmitted. Furthermore, plaintiffs allege spoliation because defendants failed to preserve the data of this transmission from the northbound Tull train, while preserving and utilizing such data from the southbound Carr train.

DISCUSSION

The Court will first address Plaintiffs' cross-motion for spoliation sanctions. "Under the common-law doctrine of spoliation, when a party negligently loses or intentionally destroys key evidence, the responsible party may be sanctioned" (*Dagro Assoc. II, LLC v. Chevron U.S.A., Inc.*, 206 A.D.3d 793, 794, 170 N.Y.S.3d 574 [internal quotation marks omitted]; see CPLR 3126). A party seeking 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" and that the evidence was destroyed either deliberately or negligently (*Dagro Assoc. II, LLC v. Chevron U.S.A., Inc.*, 206 A.D.3d at 794, 170 N.Y.S.3d 574 [internal quotation marks omitted]). Further, if the evidence was negligently destroyed, the movant must demonstrate "that the destroyed [evidence] [was] relevant to the party's claim or defense" (*Eksarko v. Associated Supermarket*, 155 A.D.3d 826, 828, 63 N.Y.S.3d 723, quoting *Pegasus Aviation I, Inc. v. Varig Logistica S.A.*, 26 N.Y.3d 543, 548, 26 N.Y.S.3d 218, 46 N.E.3d 601).

Here, defendants admit they intentionally chose not to preserve the Tull train event data recorder (EDR) data because it was not the train that came into contact with the decedent. Defendants argue this was in accordance with standard NYCTA protocol. However, Defendants

were immediately aware of a fatality involving an incident where two trains were present, and one operator had reported the decedent. In the Court's view, such knowledge created a reasonable likelihood of litigation thus imposing an obligation to preserve highly relevant evidence (*Rokach v. Taback*, 148 A.D.3d 1195, 1196, 50 N.Y.S.3d 499, 501). Thus, contrary to the defendants' contention, the plaintiff showed that the defendants had an obligation to preserve the EDR for the Tull train. The plaintiff additionally demonstrated that the defendants had control over the data, which was on their computer system until erased, that they negligently failed to preserve the data, and that such evidence was relevant to the plaintiff's claims (*see Eksarko v. Associated Supermarket*, 155 A.D.3d at 828, 63 N.Y.S.3d 723; *Mendez v. La Guacatala, Inc.*, 95 A.D.3d 1084, 1085, 944 N.Y.S.2d 313). Accordingly, the plaintiff demonstrated that sanctions against the defendants are warranted for spoliation of evidence (*see Eksarko v. Associated Supermarket*, 155 A.D.3d at 828, 63 N.Y.S.3d 723; *Peters v. Hernandez*, 142 A.D.3d 980, 981, 37 N.Y.S.3d 443; *Mendez v. La Guacatala, Inc.*, 95 A.D.3d at 1085, 944 N.Y.S.2d 313).

The determination of the appropriate sanction for spoliation of evidence is within the broad discretion of Court (*see Gaoming You v. Rahmouni*, 147 A.D.3d at 730, 46 N.Y.S.3d 211). "The nature and severity of the sanction depends upon a number of factors, including, but not limited to, the knowledge and intent of the spoliator, the existence of proof of an explanation for the loss of the evidence, and the degree of prejudice to the opposing party" (*Watson v. 518 Pa. Hous. Dev. Fund Corp.*, 160 A.D.3d 907, 909, 76 N.Y.S.3d 66 [internal quotation marks omitted]; *see Samaroo v. Bogopa Serv. Corp.*, 106 A.D.3d 713, 714, 964 N.Y.S.2d 255). In that the striking of a pleading is a drastic sanction to impose in the absence of willful or contumacious conduct, Courts will consider the prejudice that resulted from the spoliation to determine whether such drastic relief is necessary as a matter of fundamental fairness (*see Favish v. Tepler*, 294 A.D.2d 396, 396, 741 N.Y.S.2d 910). A less severe sanction is appropriate where, as here, the missing evidence does not deprive the moving party of the ability to establish his or her defense or case (*see Chiu Ping Chung v. Caravan Coach Co.*, 285 A.D.2d 621, 728 N.Y.S.2d 767; *Klein v. Ford Motor Co.*, 303 A.D.2d 376, 756 N.Y.S.2d 271).

Because plaintiffs can still attempt to prove their case using witness testimony and the preserved Carr EDR data, the loss of the Tull EDR data does not entirely deprive Plaintiffs of the

means to prove their claim. Thus, to the extent the Plaintiffs seek an order striking Defendants', the cross-motion is denied. The issue of what spoliation sanction should be imposed is respectfully referred to the Trial Court, who will be in the best position to address the issue after hearing all the evidence that seeing effect of the absence of the data had on the ability of the Plaintiff to prove a case.

Lastly, the defendants' argument that the cross-motion is untimely is without merit. The filing of a note of issue does not preclude a motion for spoliation sanctions because such relief does not involve disclosure (*see, Magee v. City of New York*, 242 A.D.2d 239, 240, 662 N.Y.S.2d 18).

Turning to Motion Sequence #11, Defendants' motion for summary judgment on the issue of liability is DENIED. A train operator may be found negligent if he or she sees a person on the tracks from such a distance as to permit the exercise of reasonable care to stop (*Soto v. New York City Transit Auth.*, 6 N.Y.3d 487, 846 N.E.2d 1211). Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of triable issues of fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 ; *Herrin v. Airborne Freight Corp.*, 301 A.D.2d 500, 500–501). Defendants failed to eliminate all triable issues of fact regarding whether the accident was unavoidable. Specifically, the NYCTA's own internal documents (the Memorandum and Occurrence Report) create a material dispute as to whether there was a three-minute window between the initial report of the decedent on the tracks and the collision. If such a gap existed, it is a question for the jury whether the defendants exercised reasonable care by failing to slow the train or issue warnings. Furthermore, plaintiffs' expert, Carl Berkowitz, P.E., raised a triable issue as to whether Carr should have seen the decedent earlier and been able to stop.

Lastly, the decedent's conduct is not a superseding cause as a matter of law if the operator could have avoided the accident through reasonable care (*Soto*, 6 NY3d 487).

Based on the foregoing, it is hereby

ORDERED that the motion by Defendants for summary judgment (Motion Seq. #10) is **DENIED**; and it is further

ORDERED that the cross-motion by Plaintiffs for an Order striking of Defendants' answer for spoliation of evidence (Motion Seq. #11) is DENIED; and it is further

ORDERED that the issue of what sanction should be imposed for spoliation is referred to the trial court.

This constitutes the decision and order of the Court.

Dated: February 11, 2026



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020