

Gamaleldin v Bourweiss
2026 NY Slip Op 31182(U)
March 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 510276/2021
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 23rd day of March 2026

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

MOHAMED H. GAMALELDIN,

Plaintiff(s),

-against-

SAADNA C. BOURWEISS,

Defendant(s).

DECISION & ORDER

Index No.: 510276/2021

Calendar No.: 21 & 22

Motion Seq.: 006 & 007

Return Date: 1/15/2026

Recitation of the following papers as required by CPLR 2219(a):

	NYSCEF Papers Numbered
006 Notice of Motion and Supporting Documents	100-105
Affirmation in Opposition and Supporting Documents	119-126
Reply Affirmation and Supporting Documents	
007 Notice of Cross-Motion and Supporting Documents	107-113
Affirmation in Opposition and Supporting Documents	114-117
Reply Affirmation and Supporting Documents	118

Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for personal injuries arising out of an automobile accident on 10/3/2019 at the intersection of 4th Avenue and 72nd Street in Brooklyn, New York.

Plaintiff has moved for an order per CPLR § 3212 for an order of summary judgment on the issue of liability. Plaintiff’s motion is granted. (MS #6). Defendant has also moved for summary judgment dismissing this action based on plaintiff failure to meet the serious injury threshold as defined by Insurance Law § 5102. Defendant’s motion is denied. (MS #7).

FACTS

Plaintiff was traveling northbound on 4th Avenue in the right lane with a green traffic signal in his favor. After plaintiff entered the intersection, defendant turned left in front of his vehicle, impacting plaintiff's front driver-side quarter panel. The impact was with such force that it knocked plaintiff unconscious. In opposition, defendant submits the uncertified police report. Defendant's attorney argues that at the scene of the accident, defendant told the police that plaintiff "sped up" striking his vehicle.

DISCUSSION

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The law is clear that "A movant's failure to sufficiently demonstrate its right to summary judgment requires a denial of the motion regardless of the sufficiency, *or lack thereof*, of the opposing papers (*Cugini v System Lbr. Co.*, 111 AD2d 114, 115 [1st Dept 1985], *appeal dismissed* 65 NY2d 1053 [1985]; *Liberty Taxi Management, Inc. v. Gincheran*, 32 AD3d 276,

278, fn.1 [1st Dept 2006], *citing Cugini v System Lbr., Co.*, [A motion for summary judgment should not be granted merely because the adversary failed to submit opposition papers.]

Plaintiff's Motion on Liability (MS #6)

In support of his motion, plaintiff submits his deposition testimony and an Order of this Court dated 5/28/2025, wherein defendant was precluded from offering evidence or submitting an affidavit in response to or in support of any dispositive motion and all affirmative defenses were stricken. Therefore, even if the police report was certified, defendant is precluded from challenging liability.

Here, plaintiff has established as a matter of law that defendant was negligent in failing to yield the right-of-way to plaintiff before attempting to turn left from 4th Avenue onto 72nd Street (see *Sirlin v Schreib*, 117 AD3d 819, 819 [2d Dept 2014] [Vehicle & Traffic Law § 1111, § 1141 and § 1163 [a)]. Plaintiff with the right-of-way was entitled to assume that the oncoming traffic would obey the traffic signal requiring them to yield because even with the right-of-way, plaintiff may have only seconds to react and is not comparatively negligent for failing to avoid the collision (*Shashaty v Gavitt*, 158 AD3d 830, 831 [2d Dept 2018], *citing Yelder v Walters*, 64 AD3d 764).

Based on the foregoing, defendants' second affirmative defense that per CPLR §§ 1411 and 1412 [contributory negligence and assumption of the risk] are dismissed per CPLR § 3212 [b] (*Shashaty v Gavitt*, 158 AD3d 830, 831 [2d Dept 2018], *citing Yelder v Walters*, 64 AD3d 764).

Defendant's Motion on Threshold (MS #7)

Defendants' motion for summary judgment dismissing the complaint pursuant to CPLR § 3212 based on plaintiff's failure to meet the No-Fault serious injury threshold pursuant to

Insurance Law § 5102 [d] is denied (*Perl v. Meher*, 18 NY3d 208, 217 [2011]). Defendant relied on plaintiff's deposition transcript and bill of particulars without submitting a report from either an expert or a doctor.

In opposition to defendants' motion, plaintiff submitted a sworn medical report objectively quantifying plaintiff's incapacitation and limitations as of the most recent examination on 8/11/2025 (*Perl v Meher*, 18 NY3d 217 citing *Toure v Avis Rent-A-Car Sys.*, 98 NY2d 345 [2002]). Plaintiff underwent a left shoulder arthroscopy on 12/29/2020, followed by physical therapy. As of 8/11/2025, plaintiff was still in pain, his shoulder "clicked" and demonstrated severe restrictions in range of motion with diminished muscle strength. His limited ranges of motion were objectively quantified with a handheld goniometer. The pain was verified with objective testing with positive findings. Plaintiff reported that these continuing issues interfere with his daily activities. Plaintiff was discharged from treatment as he had reached maximum medical improvement.

Therefore, assuming defendant had met their burden of proof, plaintiff has demonstrated a material issue of fact necessitating a trial on damages (*Giuffrida v Citibank*, 100 NY2d 81 and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that that plaintiff's motion for an order per CPLR § 3212 granting summary judgment on the issue of liability is GRANTED (MS #6), and it is further

ORDERED that defendants' second affirmative defenses per CPLR §§ 1411 and 1412 [contributory negligence and assumption of the risk] are dismissed per CPLR § 3212 [b], and it is further

ORDERED that the Clerk shall enter judgment accordingly, and it is further

ORDERED that defendant's motion for an order per CPLR § 3212 granting summary judgment and dismissing this action based on Insurance Law § 5102 is DENIED. (MS #7).

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.

Dated: 3/23/2026