

EC v Shah
2026 NY Slip Op 31263(U)
March 26, 2026
Supreme Court, Kings County
Docket Number: Index No. 526086/2024
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 26th day of March 2026

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

DECISION & ORDER

EC, INFANT BY MOTHER AND NATURAL GUARDIAN, ERICA RILEY, AND REICA RILEY INDIVIDUALLY,

Index No.: 526086/2024

Calendar No.: 8 & 9

Plaintiff(s),

Motion Seq.: 1 & 2

-against-

Return Date: 3/26/2026

SYED SHAH, AMERICAN UNITED TRANSPORTATION, INC., LASHA KHUTSHISHVILI, and TYRA NICOLE WASHINGTON,

Defendant(s).

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

**NYSCEF
Papers
Numbered**

001	Notice of Motion and Supporting Documents	9-17
002	Notice of Motion and Supporting Documents	20-30
	Affirmation in Opposition and Supporting Documents	31-32
	Reply Affirmation and Supporting Documents	33-34

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

This is an action for personal injuries arising out of a motor vehicle accident on Eastern Parkway in Brooklyn, New York. At the time of the accident, plaintiffs were passengers in the vehicle operated by defendant LASHA KHUTSHISHVILI (“khutshishvili” or “host vehicle”). This vehicle was registered to defendant UNITED TRANSPORTATION, INC. (“United”), and owned by non-party Liberty Leasing LLC. The accident occurred when the host vehicle failed to stop and hit defendant SYED SHAH in the rear.

United has moved for an order under CPLR § 3212 and CPLR § 3211 [a] dismissing this action against it because vicarious liability is preempted by 49 U.S.C. § 30106 (The Graves Amendment). The motion is granted without opposition. (MS 001).

Plaintiffs have also moved for summary judgment per CPLR § 3212 on the issue of liability against defendant Khutshishvili arguing that he violated VTL § 1129 (a), because a rear-end collision establishes negligence as a matter of law. Plaintiffs also moved to dismiss all defendants' affirmative defenses of culpable conduct, contributory negligence, comparative negligence and assumption of risk. In opposition, defendant Khutshishvili submits an affidavit that the host vehicle stopped suddenly and therefore he was unable to come to stop to avoid hitting the rear of the host vehicle. (MS 002).

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).

Plaintiffs established a prima facie entitlement to summary judgment against (*Ayotte v Gervasio*, 81 NY2d 1063, citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "A rear-end collision with a stopped or stopping vehicle creates a prima facie case of negligence with

respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (*Ramos v. TC Paratransit*, 96 AD3d 924, 925 [2d Dept. 2012] [internal citations omitted]). In opposition, defendant Khutshishvili failed to come forward with a nonnegligent explanation for the accident. The affidavit was conclusory without reference to the traffic conditions or the speed of his vehicle.

Accordingly, it is hereby

ORDERED that defendant UNITED TRANSPORTATION, INC.'S motion for an order under CPLR § 3212 and CPLR § 3211 [a] dismissing this action and all crossclaims against it because vicarious liability is preempted by 49 U.S.C. § 30106 (The Graves Amendment) is GRANTED without opposition (MS 001), and it is further

ORDERED that plaintiffs' motion for summary judgment per CPLR § 3212 on the issue of liability against defendant Khutshishvili is GRANTED (MS 002), and it is further

ORDERED that plaintiffs' motion for summary judgment per CPLR § 3212 dismissing all defendants' affirmative defenses on liability is GRANTED, and it is further

ORDERED that defendant SYED SHAH's affirmative defense of Comparative Negligence is dismissed, and it is further

ORDERED that defendants AMERICAN UNITED TRANSPORTATION INC. and LASHA KHUTSISHVILI's second, twelfth, and thirteenth affirmative defenses are dismissed, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in black ink, appearing to be 'Anne J. Swern', written over a horizontal line.

Hon. Anne J. Swern, J.S.C.
Dated: 03/26/2026