

Diallo v New York City Tr. Auth.

2026 NY Slip Op 31614(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 154379/2022

Judge: Richard Tsai

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI PART 21

Justice

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MAMADOU YAYA DIALLO,

Plaintiff,

INDEX NO. 154379/2022

MOTION DATE 08/19/2025

MOTION SEQ. NO. 002

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY, MTA
BUS COMPANY, MANHATTAN AND BRONX SURFACE
TRANSIT OPERATING AUTHORITY, and OMAR
RODRIGUEZ-BODON,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 40 - 55
were read on this motion to/for JUDGMENT - SUMMARY.

In this action plaintiff, Mamadou Yaya Diallo, alleges injuries resulting from a motor vehicle collision. Plaintiff now moves for partial summary judgment, as to the issue of liability, and to dismiss the affirmative defenses of culpable conduct and contributory negligence. Defendants oppose the motion.

BACKGROUND

According to the complaint, plaintiff alleges injuries stemming from a June 15, 2021, motor vehicle collision involving plaintiff’s motorcycle and a public bus, alleged to be owned by the New York City Transit Authority (NYCTA), the Metropolitan Transportation Authority (MTA), MTA Bus Company (MTA Bus), the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA), and alleged to be operated by Omar Rodriguez-Bodon (collectively, Transit Defendants) at or near the intersection of West Street and Christopher Street (plaintiff’s Exhibit 1 [NYSCEF Doc. No. 43] summons + complaint, ¶¶ 32 – 34).

At plaintiff’s deposition, he testified to traveling northbound on West Street when he approached its intersection with Christopher Street due to noticing a flat tire on his motorcycle (plaintiff’s Exhibit 4 [NYSCEF Doc. No. 47] Plaintiff EBT tr. at 23, lines 10 – 22). Specifically, plaintiff testified that “since I noticed there was a flat tire ... I was driving north so I pulled over on the safety area” (*id.* at 24, lines 4 – 6). According to plaintiff, the safety area can be described as the parking lane (*id.*, lines 9 - 17). This location was roughly “around 25 feet, 25 to 30 feet” away from the bus stop (*id.*, lines 28

– 21). Upon stopping, plaintiff testified to inflating his flat tire by placing a pump in the tire (*id.*, at 26, lines 6 – 13).

Plaintiff further testified that once he started putting air in his tire, he noticed a bus located at the bus stop, in a stopped position, with its engine off (*id.*, at 27, lines 8 – 17). Plaintiff further testified that the bus operator was aware of his presence in the safety area. Specifically, plaintiff testified:

“the reason I am saying the driver saw me, when I pulled on that side, that safety area there was the driver and his supervisor. They were standing at the bus, at that area where – at the area where the passengers can sit and wait for the bus. They were talking there. We had made eye contact” (*id.*, at 33, lines, 12 – 21).

According to plaintiff, “by the end of pumping [the tire] they moved the bus” (*id.*, at 27, lines 18 – 21). Once the bus began to move, the back of the bus struck plaintiff and his motorcycle (*id.*, at 28, lines 3 – 9). In describing the collision plaintiff testified that once he was hit:

“I fell. It hit me. I felt something hit me. I fell, when I fell on the pavement, when I fell on the pavement and the motorcycle stick, the front of the tire, the top of the tire, the tire protection, the curb, stick on the rear of the bus. So that it created a little resistance when it was coming. That’s the only thing that saved me” (*id.*, at 31, lines 14 – 23).

During defendant Rodriguez-Bordon’s deposition, the bus operator, he testified to making a complete stop at the bus stop located at the intersection of West Street and Christopher Street on June 15, 2021 (plaintiff’s Exhibit 5 [NYSCEF Doc. No. 47] Rodriguez-Bordon EBT Tr. at 25, line 22 through 26, line 5). More specifically, Rodriguez-Bordon testified that “I made a clear stop, emergency break, and then I turned off the bus” at this location (*id.*, at 29, lines 13 – 17). Rodriguez-Bordon brought the bus to a complete stop at this location so he could take a break during his scheduled bus route (*id.*, at 30, lines 3 – 12).

During this break, defendant Rodriguez-Bordon testified that “I started the bus and then I backed up the bus ... to make room for another buses [sic] coming up” (*id.*, at 37, lines 12 – 24). He further testified that, before backing up the bus, “I looked from the first door I looked back,” and saw “nothing” (*id.*, at 38, lines 11 – 23). Rodriguez-Bordon, however, did testify that “the middle of the bus of the rear” is an “area[] that [is] on the rear of the bus that [he] cannot see sitting in the driver’s seat” (*id.*, at 21, lines 12 – 16). After Rodriguez-Bordon began reversing, he testified that “I heard something and I stopped the bus, I went – parking brake and then I went outside” (*id.*, at 39, lines 5 – 9). It was at this moment when Rodriguez-Bordon realized the bus collided with plaintiff.

DISCUSSION

“To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party” (*Nellenback v Madison County*, 44 NY3d 329, 334 [2025] [internal citations omitted]).

Vehicle and Traffic Law §1211 (a) provides that “[t]he driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.” In this instance, plaintiff has met his prima facie burden by showing that defendant Rodriguez-Bordon was “negligent as a matter of law in backing up [his vehicle] into plaintiff’s stopped [motorcycle] without taking adequate precautions” (*Garcia v Verizon New York, Inc.*, 10 AD3d 339, 340 [1st Dept 2004]). The deposition testimony of both plaintiff and defendant Rodriguez-Bordon, the bus operator, established that Transit Defendants were negligent as a matter of law.

During plaintiff’s deposition, plaintiff testified to being behind the bus, pumping air into his tire, prior to the collision (Plaintiff EBT Tr. at 27, lines 8 – 18). Despite this fact, defendant Rodriguez-Bordon reversed the bus into plaintiff, which he admits to in his own deposition testimony (Rodriguez-Bordon EBT Tr. at 39, lines 5 – 9).

In opposition, Transit Defendants argue that there are material issues of fact that warrant denial of summary judgment. Specifically, Transit Defendants’ counsel argues there are several disputes of material fact, arguing disputes to: (1) the amount of time the bus was moving after the collision, (2) whether plaintiff was actually pumping air in his tires, (3) whether the bus collided with the motorcycle itself, and (4) plaintiff’s position at the time of the collision (Transit Defendants’ counsel’s affirmation in opposition to motion [NYSCEF Doc. No. 49] ¶¶ 16 – 19). Ultimately, such arguments are insufficient to defeat a motion for summary judgment as they fail to raise a genuine dispute as to material facts. As plaintiff’s counsel correctly points out, such disputes deal with issues after the collision occurred, irrelevant issues, or inconsistencies in plaintiff’s testimony which were later explained (plaintiff’s counsel’s affirmation in reply [NYSCEF Doc. No. 55] ¶¶ 23- 26).

Plaintiff is also entitled to summary judgment in his favor as to liability against the NYCTA. As plaintiff points out, Rodriguez-Bodon testified at his deposition that his employer is New York City Transit (Rodriguez-Bodon EBT, at 8, lines 18-25), and it is undisputed that the incident occurred within the scope of Rodriguez-Bodon’s employment. The NYCTA is therefore liable under principles of respondeat superior (*Riviello v Waldron*, 47 NY2d 297, 302 [1979]; *Ryga v New York City Tr. Auth.*, 17 AD3d 561, 562 [2d Dept 2005]).

However, summary judgment in plaintiff's favor against the other defendants is denied. Plaintiff did not submit proof in the moving papers that the other defendants employed Rodriguez-Bodon, or that they owned the bus at issue. Although plaintiff points out that defendants appeared to admit that they owned the bus at issue in their response to plaintiff's Statement of Material Facts, this argument was improperly raised for the first time in reply (*Givoldi, Inc. v United Parcel Serv.*, 286 AD2d 220, 220 [1st Dept 2001]).¹

Plaintiff is also granted summary judgment striking the first affirmative defense of culpable conduct.² Here, plaintiff has satisfied the prima facie burden, showing he was not at fault in the happening of the accident. As discussed above, plaintiff was stationary behind the bus when it began to reverse, indicating no conduct that would implicate he was comparatively at fault. Under these circumstances, "[b]ecause the record does not contain any evidence of culpable conduct by plaintiff, Supreme Court should [] dismiss[] this affirmative defense" (*Gamble v MTA Bus Co.*, 2025 NY Slip Op 05767 [1st Dept Oct. 21, 2025]; see also *Stephenson v New York City Tr. Auth.*, 226 AD3d 546 [1st Dept 2024]).

CONCLUSION

Accordingly, it is hereby **ORDERED** that plaintiff's motion for summary judgment as to the issue of liability is **GRANTED IN PART TO THE EXTENT THAT** plaintiff is granted summary judgment as to liability against defendants New York City Transit Authority and Omar Rodriguez-Bodon, who are jointly and severally liable; and it is further

ORDERED that Transit Defendant's first affirmative defense (culpable conduct) is stricken; and it is further

¹ Additionally, as indicated in the part rules, this court has never required a Statement of Material Facts (see [part21-rules.pdf](#), at 6 ["The court does not require a Statement of Material Facts"] [last accessed Apr 10, 2026]). The requirement to submit a Statement of Material Facts was repealed effective July 7, 2025, before plaintiff made the motion. Thus, this court declines to decide whether defendants' response to plaintiff's statement of material facts should be regarded as an informal judicial admission.

² Plaintiff also sought summary judgment striking the defense of contributory negligence, which was not asserted in the answer.

ORDERED that plaintiff's motion is otherwise denied.

ENTER:



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4/10/2026

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE