

Whitehead v Stewart

2026 NY Slip Op 31728(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 158840/2022

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

-----X

NICHELLE WHITEHEAD,

Plaintiff,

- v -

CALVIN STEWART, SHAKWON SIMMS, CANDIDO CANALES, NEW YORK CITY TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY DIVISION OF PARATRANSIT, ACCESS-A-RIDE, CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY, MTA NEW YORK CITY TRANSIT PARATRANSIT DIVISION D/B/A ACCESS-A-RIDE and QUANG LY,

Defendants.

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INDEX NO. 158840/2022
MOTION DATE 09/24/2025, 10/16/2025
MOTION SEQ. NO. 002-003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 78-80, 82-83 were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 68-77, 84-87 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, it is hereby **ORDERED** that plaintiff's motion to renew and reargue this court's prior decision and order dated July 30, 2025 (Seq. No. 002) is **GRANTED**; and it is further

ORDERED that, upon reargument and renewal, so much of the court's prior decision and order dated July 30, 2025 that granted defendant Quang Ly's motion for summary judgment dismissing the action as against Quang Ly is vacated, and upon reargument and renewal, defendant Quang Ly's motion for summary judgment is **DENIED**; and it is further

ORDERED that the motion by defendants New York City Transit Authority, New York City Transit Authority Division Of Paratransit, Access-A-Ride, Metropolitan Transportation Authority, and MTA New York City Transit Paratransit Division D/B/A Access-A-Ride to reargue this court's prior decision and order dated July 30, 2025 (Seq. No. 003) is **GRANTED**; and it is further

ORDERED that, upon reargument, the Court adheres to its prior determination, which denied their cross-motion for summary judgment.

In this action arising out of multi-vehicle collisions, this court issued a decision and order dated July 30, 2025, which granted defendant Quang Ly's motion for summary judgment dismissing the action as against him, but denied the cross-motion for summary judgment by defendants New York City Transit Authority, New York City Transit Authority Division Of Paratransit, Access-A-Ride, Metropolitan Transportation Authority, and MTA New York City Transit Paratransit Division D/B/A Access-A-Ride (collectively, the Transit Defendants) (see Transit Defendants' Exhibit E in support of motion [NYSCEF Doc. 74]).

Plaintiff now moves to reargue the prior decision, arguing that the court erred in rejecting as inadmissible a statutory hearing transcript that plaintiff submitted in opposition to Ly's motion for summary judgment. Additionally, plaintiff moves for renewal, to submit an affirmation from plaintiff in opposition to Ly's motion. Ly opposes the motion.

The Transit Defendants also move to reargue the prior decision, arguing that when Ly was granted summary judgment dismissing the action as against him, the court should have also granted summary judgment to the Transit Defendants, because plaintiff's theory of liability against the Transit Defendants was based on their alleged vicarious liability for Ly's actions. Plaintiff opposes the Transit Defendants' motion.

This decision addresses both motions.

I. Plaintiff's Motion to Reargue and Renew (Seq. No. 002)

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221 [d] [2]).

In contrast, 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]).

Reargument is granted. On the prior motion, this court overlooked that plaintiff's statutory hearing transcript was, in fact, certified by a stenographer, and therefore should have been considered in opposition to Ly's motion for summary judgment.

Renewal is also granted to permit plaintiff to submit her affirmation. "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, in footnote 1 of the prior decision, the court expressed a concern about the admissibility of the statutory hearing

transcript, which appeared on the face of the record but was not argued by the parties—that the transcript could not be used against Ly because Ly was not present at plaintiff’s statutory hearing testimony. On this motion, plaintiff not only argues that the transcript is admissible in the absence of any objection from Ly that he was not present at her statutory hearing, but also seeks to submit an affirmation from herself, which the court now permits in the exercise of discretion (see *Nieves v L.G. Plumbing, Inc.*, 18 AD3d 276, 277-78 [1st Dept 2005] [“it was appropriate to grant renewal in order to consider plaintiff’s new affidavit; in the absence of prejudice to defendant, counsel’s explanation that he had incorrectly concluded that plaintiff’s deposition testimony would suffice constitutes an adequate excuse for the failure to offer the affidavit in connection with the original motion”]).

Upon reargument and renewal, Ly’s motion for summary judgment dismissing the action as against him is denied. At her statutory hearing, plaintiff testified that Ly’s vehicle was in the “left lane, merging into the middle” when the accident occurred (see exhibit A in opposition to Motion Seq. No. 001 [NYSCEF Doc. No. 35], statutory hearing tr at 60, lines 16-19). In her affirmation, plaintiff states that, just before the accident, she was a passenger in Ly’s vehicle in the left lane, and the accident happened when Ly’s vehicle “was moving from the left lane into the middle lane” (see plaintiff’s Exhibit 1 [NYSCEF Doc. No. 80], plaintiff’s affirmation ¶ 11). Plaintiff’s statutory hearing testimony and plaintiff’s affirmation raise a triable issue of fact as to whether Ly made a sudden or unsafe lane change.

II. Transit Defendants’ Motion to Reargue (Seq. No. 003)

Reargument is granted. As the Transit Defendants point out, it was inconsistent to deny their cross-motion for summary judgment after the court determined that Ly was not negligent, because the Transit Defendants’ liability, if any, was based on vicarious liability of Ly’s actions.

However, upon reargument, the court adheres to its prior determination. Given that this court has now denied Ly’s motion for summary judgment upon renewal and reargument, the Transit Defendants’ argument that the court’s prior decision was inconsistent is now academic.

The Transit Defendants’ remaining arguments are unavailing. “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 492 [1st Dept 2016] [internal quotation marks, emendation and citations omitted]).

The prior decision states, in relevant part,

“On the record before this court, the Transit Defendants’ submissions were insufficient for this court to determine, as a matter of law, whether the NYCTA could owe a duty of care to plaintiff as an Access-A-Ride user

solely in its capacity as an administrator of the Access-A-Ride program, or if the NYCTA fell within the exceptions discussed above [of a principal's liability for the actions of an independent contractor].

* * *

In this court's view, much more information is needed about the Access-A-Ride program, the Transit Defendants' roles, if any, in Access-A-Ride program, and the relationship, if any, to the participating Access-A-Ride vendors to decide, as a matter of law, the issue of the NYCTA's purported liability as administrator of the Access-A-Ride program."

Contrary to the Transit Defendants' argument, the court did not add this "amorphous theory"; this was a theory that plaintiff specifically argued in opposition to their cross-motion for summary judgment (see NYSCEF Doc. NO. 53, affirmation of plaintiff's counsel ¶¶ 15-20). The Transit Defendants' submissions failed to refute this theory.

To the extent that the Transit Defendants relied upon the facts contained in the affirmation of Benoit Dupuy (see NYSCEF Doc. No. 42), plaintiff was "not required to accept" Dupuy's representation that Quang Ly was never affiliated, contracted, retained by, or provided transportation services for the New York City Transit Authority or Access-A-Ride; rather, plaintiff is "entitled to test that representation" herself (V. K. v R.C. Archdiocese of N.Y., 245 AD3d 438, 440 [1st Dept 2026]). In the prior motion, plaintiff averred that, at the time of accident, she was a passenger in Ly's vehicle because Ly had picked her up as part of a scheduled ride that she made by "calling the New York City Transit Authority/MTA" on the prior day; that she saw on Ly's vehicle "a sign hanging from one of the passenger side windows containing the words "MTA New York City Paratransit"; and when she was picked up by Ly, "he used the photograph that was taken during my initial interview with the New York City Transit Authority/MTA to confirm my identity" (exhibit B in opposition to Transit Defendants' Cross-Motion Seq. No. 001 [NYSCEF Doc. No. 55], plaintiff's affidavit ¶¶ 3-11).

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4/21/2026

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

Motion Seq. No. 002

Motion Seq. No. 003

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

DENIED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

OTHER

REFERENCE