

Antoine v Hafeez

2026 NY Slip Op 31873(U)

April 29, 2026

Supreme Court, Kings County

Docket Number: Index No. 501729/2023

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 29th day of April 2026.

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

TINY ANTOINE

Plaintiff(s),

-against-

ABDOOL HAFEEZ, CHANEL
THOMAS AND JOSE SOTO

Defendant(s).

DECISION & ORDER

Index No.: 501729/2023

Return Date: 04/23/2026

Motion Seq.: 003

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

**NYSCEF
Papers Numbered**

Notice of Motion and Supporting Documents	50-51
Affirmation in Opposition and Supporting Documents	52
Reply Affirmation and Supporting Documents	53

Upon the foregoing papers, plaintiff’s motion per CPLR § 2221 for leave to reargue this Court’s decision dated 12/31/2025 denying summary judgment is granted and upon reargument, the Court adheres to initial determination as follows:

Plaintiff, a passenger in defendant Hafeez’s vehicle (host vehicle), commenced this action to recover damages for personal injuries sustained in an automobile accident with defendant Soto’s vehicle, operated by defendant Thomas. The accident occurred on Remsen Avenue, approximately five feet north of its intersection with Ditmas Avenue in Brooklyn, New York. Hafeez testified that defendant Thomas moved from the right lane to the left lane striking his vehicle. However, Thomas testified that he was in the left lane when Hafeez’s vehicle struck him.

The Court previously denied plaintiff's motion for an order per CPLR § 3212 granting summary judgment on liability against all defendants, but dismissed their affirmative defenses of comparative negligence, culpable conduct and assumption of risk. The Court held that based on the conflicting deposition testimony, plaintiff failed to establish that defendants were negligent as a matter of law. Thus, the credibility of the parties was a question to be determined by a jury (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

In support of the motion to reargue, plaintiff asserts that defendants' respective versions of the accident establish as a matter of law that one or both were negligent. Therefore, plaintiff was entitled to summary judgment on the issue of defendants' negligence. In support of this argument, plaintiff relies on *Balladares v City of New York*, 177 AD3d 942 [2d Dept 2019] and *Garcia v Tri-County Ambulette Service, Inc.*, 282 AD2d 206 [1st Dept 2001]. This reliance is misplaced.

It is well established that a motion for leave to reargue is addressed to the sound discretion of the court and affords the moving party an opportunity to show that the court overlooked or misapprehended matters of fact or the law, or for some reason mistakenly arrived at its earlier decision (see CPLR § 2221 [d] [2]; *JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 776, 778 [2d Dept. 2018]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2d Dept. 2015]). Such a motion "shall not include any matters of fact not offered on the prior motion" (*Williams v Abiomed, Inc.*, 173 AD3d 1115, 1116 [2d Dept. 2019] [internal citations omitted]; CPLR § 2221 [d] [2]). Such a motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*Williams v Abiomed, Inc.*, 173 AD3d 1116).

"[T]he right of an innocent passenger to summary judgment is not in any way restricted by potential issues of comparative negligence as between the drivers of the two vehicles"

(*Garcia v Tri-County Ambulette Service, Inc.*, 282 AD2d 207). In *Garcia*, the trial court denied plaintiff's motion for summary judgment on culpable conduct and defendants' negligence. The Appellate Division reversed the trial court only to the extent that plaintiff's motion for summary judgment was granted on the issue of culpable conduct. The Court in *Garcia* expressly rejected defendants' argument that summary judgment on the issue of culpable conduct was inappropriate because "one or the other may not be found negligent by a jury" (*id.*).

The First Department affirmed this principle in *Hobbs v MTA Bus Company*, 211 AD3d 471 [1st Dept 2022]. The Court held that "an innocent passenger must still establish a defendant driver's liability under traditional principles of tort liability in order to prevail on the issue of liability against that driver" (211 AD3d 472; *see also Guzman v DeSantis*, 148 AD3d 580, 581 [1st Dept 2017] [In the absence of any finding of defendants' respective liability as a matter of law, an innocent passenger is still entitled to summary judgment only to the extent of finding no culpable conduct by him on the issue of liability.]).

The Second Department is in accord with the First Department that an innocent passenger must establish defendants' liability as a matter of law to obtain summary judgment on the issue of their negligence (*Balladares v City of New York*, 177 AD3d 942, 943 [Plaintiffs, passengers in a non-party's vehicle, established as a matter of law that the defendant driver entered the intersection without yielding even though he initially stopped at the stop sign.]).

The Court has considered plaintiff's remaining arguments and find same to be without merit. Therefore, the Court adheres to its initial decision denying plaintiff's motion for summary judgment on the issue of each defendants' liability (*Cameron v City of Long Beach*, 297 AD2d 774).

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to reargue this Court's decision dated 12/31/2025 per CPLR § 2221 is granted, and upon reargument, the Court adheres to initial determination denying plaintiff's motion for summary judgment per CPLR § 3212 on the issue of defendants' liability.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', written over a faint circular stamp or watermark.

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

Dated: 4/29/2026