

Javeria v 24 Ave Car Serv., Inc.
2026 NY Slip Op 31907(U)
March 31, 2026
Supreme Court, Kings County
Docket Number: Index No. 502964/2023
Judge: Ingrid Joseph
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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 31st day of March 2026.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
Mahnoor Javeria,

Index No: 502964/2023
Motion Seq. 3

Plaintiff(s)

-against-

24 Ave Car Service, Inc. and Suhrob Khamzaev,
Defendant(s)

ORDER

-----X

The following e-filed papers read herein:
Notice of Motion/Affirmation in Support/Affidavits Annexed
Exhibits Annexed/Reply.....
Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

NYSCEF Nos.:
28-36; 49
39-40

In this action, 24 Ave Car Service (“24 Ave”) and Suhrob Khamzaev (“Khamzaev”) (Collectively the “Defendants”) move (Motion Seq. 3) for summary judgment on the issue of liability dismissing Mahnoor Javeria’s (“Plaintiff”) complaint. Plaintiff has opposed the motion.

This matter arises from an alleged motor vehicle collision with a bicyclist that occurred on November 26, 2022, at the intersection of Emmons Avenue and Coyle Street in the County of Kings, New York. Plaintiff commenced this action on or about March 3, 2023, via Summons and Verified Complaint. Defendants interposed a Verified Answer on March 17, 2023.

In support of their motion, Defendants argue that they are entitled to summary judgment because they were not negligent as a matter of law since Plaintiff was the sole proximate cause of the accident. At his EBT, Khamzaev testified that on the date of the accident, he was operating a vehicle owned by his employer 24 Car but that he was not officially performing job related duties. Khamzaev states that it was a sunny day and that his vehicle was moving at approximately 22-23 mph at the time of the accident. Furthermore, Khamzaev claims that he was traveling straight on Emmons Avenue, which he described as a two-way street that has a concrete divider separating the opposite lanes of travel with parking spaces along the sides of the divider for vehicles. Khamzaev also testified that as he was traveling straight on Emmons Avenue that the traffic light that controls the intersection was green. Khamzaev claims that he intended to proceed straight through the intersection and that at the time of the collision, Plaintiff was riding a bicycle through the pedestrian crosswalk. Thereafter, Khamzaev testified that he immediately applied his brakes upon impact and stopped his vehicle. Khamzaev further testified that although he is familiar driving around the subject accident location, that his view of any potential bicyclists was obstructed by the vehicles parked on both sides of his lane of travel. Thus, Khamzaev testified that he did not see Plaintiff before the accident.

In support of their motion, Defendants submit inter alia, Plaintiff's EBT, Defendant Khamzaev's EBT, a police report, and dash camera footage of the accident.

In opposition to the motion, Plaintiff argues that Defendants are not entitled to summary judgment because Defendants have not established that they are free from negligence as a matter of law and that the police report and dash camera footage are inadmissible since they were not properly certified or authenticated. Plaintiff asserts that Defendant Khamzaev has failed to demonstrate freedom from comparative negligence or that he was not the sole proximate cause of the accident because he failed to exercise due care to avoid colliding with bicyclists, give warning when necessary, and that he failed to keep a reasonably vigilant lookout and to see what is there to be seen through the reasonable use of his senses. With respect to the dash camera footage, Plaintiff argues that it lacks proper authentication because Khamzaev testified that he did not personally extract the video from the dashcam system, and that he gave the vehicle to its owner who then extracted the video. Additionally, Plaintiff argues that it is inadmissible because the footage presented to the court is selectively edited rather than a complete recording of the incident and that it does not meet the requirements for admissibility of a reproduction. Plaintiff also argues that the dash camera footage captures a different perspective/angle of the accident than what Khamzaev saw, thus making it an inaccurate representation of the accident scene.

At her EBT, Plaintiff testified that on the date of the accident that she was riding a bicycle on Coyle St. towards Emmons Ave on her way home. Plaintiff states that prior to the accident, she was riding in the roadway on Coyle Street because there was no bike line. Plaintiff contends that she intended to make a right turn onto the bike lane on Emmons Ave. Plaintiff testified that while she did see a traffic light at the intersection, that she did not recall the color of the light when she first saw it. However, Plaintiff also testified that she told the police officer that arrived on scene that she did not have a green light when she proceeded through the intersection. Furthermore, Plaintiff testified that she did not come to a stop at the intersection and proceeded through the intersection before attempting to turn. Plaintiff states that the accident happened while she was turning. Plaintiff contends that Khamzaev's vehicle was traveling on Emmons Ave. and was moving at the time of the accident. Plaintiff testified that she did not see Khamzaev's vehicle prior to the collision and that she was unsure if any vehicles were approaching from the opposite side of the roadway.

It is well established that "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Ayotte v. Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v. Buitriago*, 107 AD3d 977 [2d Dept 2013]). Failure to make such a showing requires the denial of the motion, regardless of the sufficiency of the papers in opposition (see *Alvarez*). Once a prima facie demonstration has been made, the burden shifts

to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v. Nassau County*, 111 A.D.2d 212,489 NYS2d 246 [2nd Dept. 1985]; *Steven v. Parker*, 99 AD2d 649, 472 NYS2d 225 [2nd Dept. 1984]; *Galeta v. New York News, Inc.*, 95 AD2d 325,466 NYS2d 321 [1st Dept. 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v. Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept. 1990]).

A defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident (*Bender v East End Bus Lines, Inc.*, 237 AD3d 1019 [2d Dept. 2025]; *Lewinsky v City of New York*, 229 AD3d 456 [2d Dept. 2024]; *A.B. v Waring*, 219 AD3d 1291 [2d Dept. 2023]; *Boulos v Lerner-Harrington*, 124 AD3d 709 [2d Dept. 2015]). There can be more than one proximate cause of an accident, which is generally for the trier of fact to determine (*Hayes v County of Suffolk*, 222 AD3d 950 [2d Dept. 2023]; see *Kalland v Hungry Harbor Assoc. LLC*, 84 AD3d 889 [2d Dept. 2011]; see also *Cox v Nunez*, 23 AD3d 427 [2d Dept. 2005]). However, the issue of proximate cause “may be decided as a matter of law where only one conclusion may be drawn from the facts (*Hayes* at 952; *Kalland* at 889; *Nesbitt v Gallant*, 149 AD3d 763 [2d Dept. 2017]). Accordingly, the defendants do not carry their burden simply by establishing that another party’s actions were a proximate cause; they must establish their own freedom from comparative fault as a matter of law (*Bender* at 1020-1021; *Boulos* at 709-710; *Fergile v Payne*, 202 AD3d 928 [2d Dept. 2022]).

A failure to comply with the Vehicle and Traffic Law (“VTL”) constitutes negligence per se (see *Colpani v Allied Cent. Ambulette, Inc.*, 97 AD3d 776 [2d Dept. 2012]). Drivers with the right-of-way are entitled to assume that other drivers will obey the traffic laws but bear a duty to avoid colliding with other vehicles (*Nesbitt* at 763-764; *Twizer v Lavi*, 140 AD3d 736 [2d Dept. 2016]). However, “[a] driver with the right-of-way who has only seconds to react to a vehicle which has failed to yield is not comparatively negligent for failing to avoid the collision” (*A.B.* at 1292; *Jeon Sook Lee-Son v Doe*, 170 AD3d 973 [2d Dept. 2019]).

VTL 1110(a) states:

Every person shall obey the instructions of any official traffic-control device applicable to him placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this title.

Accordingly, a driver who enters an intersection against a red traffic light in violation of Vehicle and Traffic Law 1110 (a) is negligent as a matter of law (*Angelillo v Guerin*, 219 AD3d 556 [2d Dept. 2023]; *Wynter v City of New York*, 173 AD3d 1122 [2d Dept. 2019]).

The use of a statement recorded in a police accident report involves two levels of hearsay, each of which must fit within a hearsay exception to render the statement contained within the report admissible (*Yassin v Blackman*, 188 AD3d 62 [2d Dept. 2020]; *Memena v Cole*, 131 AD3d 1020 [2d Dept. 2015]). At the first level of hearsay, the report itself must be admissible (*Yassin* at 65). A properly certified police accident report is admissible where “the report is made based upon the officer's personal observations and while carrying out police duties” (*Id.*; *Memenza* at 1021). CPLR 4518(c) provides that the foundation for the admissibility of, inter alia, the records of a department or bureau of a municipal corporation or of the state may be laid through a proper certification. The certification must set forth that the record “was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter (CPLR 4518[a]). At the second level of hearsay, assuming a properly certified police accident report, the statement recorded within the police accident report by the police officer must satisfy a hearsay exception (*Yassin* at 66; see *Noakes v Rosa*, 54 AD3d 317 [2d Dept. 2008]; see also *DeLuca v Blanco*, 31 AD3d 600 [2d Dept. 2006]). An uncertified police accident report does not constitute admissible evidence, absent a proper foundation for its admissibility (*Yassin v Blackman*, 188 AD3d 62[2d Dept. 2020]; *Memena v Cole*, 131 AD3d 1020 [2d Dept. 2015]).

Here, the Court finds that Defendants submitted police report is uncertified and that Defendants have failed to establish a foundation for its admissibility.

It is well settled that a video recording may be authenticated by the testimony of a witness to the recorded event or of an operator or installer or maintainer of the equipment that the video accurately represents the subject matter depicted (*People v Patterson*, 93 NY2d 80 [1999]; *People v Byrnes*, 33 NY2d 435 [1974]; *Keene v Rosas*, 215 AD3d 938 [2d Dept. 2023]). Testimony, expert or otherwise, may also establish that a videotape “truly and accurately represents what was before the camera (*Patterson* at 84). Evidence establishing the chain of custody of the videotape may additionally buttress its authenticity and integrity, and even allow for acceptable inferences of reasonable accuracy and freedom from tampering (*Patterson* at 84; cf., *People v Ely*, 68 NY2d 520 [1986]). Any deficiencies in the chain of custody affect only the weight of the evidence, not its admissibility (*People v Elwell*, 202 AD3d 817 [2d Dept. 2022]; *People v Costello*, 128 AD3d 848 [2d Dept. 2015]). Since the ultimate object of the authentication requirement is to ensure the accuracy of the [video] sought to be admitted into evidence, any person having the requisite knowledge of the facts may verify it (*Byrnes* at 347).

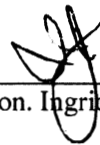
With respect to the submitted dash cam footage, the Court finds that the footage was properly authenticated and is admissible. Khamzaev, a witness to the recorded events, attested that while the dash cam had a wider angle than what he may have personally been able to see, that it was a fair and accurate depiction of the scene and accident. Moreover, contrary to Plaintiff's contentions, CPLR 4539 is inapplicable because it pertains only to documents that originally existed in hard copy form and are scanned for storage as digital images, and thus does not apply to documents that were originally created in electronic form such as the dash cam footage herein (see *Knight v New York and Presbyterian Hospital*, 42 NY3d 699 [2024]; citing *People v Kangas*, 28 NY3d 984 [2016]).

Here, the Court finds that Defendants have established their prima facie burden for summary judgment as a matter of law by demonstrating that Plaintiff failed to observe Defendants' vehicle and entered an intersection against a red traffic light in violation of Vehicle and Traffic Law. In opposition, Plaintiff has failed to raise a triable issue of fact. Though it is true that a driver who lawfully enters an intersection is still required to use reasonable care to avoid colliding with another vehicle in the intersection and may be found comparatively negligent if said driver fails to do so, the record reveals that Defendant Khamzaev was without enough time to take evasive action to avoid the collision, for which he cannot be held at fault.

Accordingly, it is hereby,

ORDERED, that Defendants' motion for summary judgment is denied.

This constitutes the decision and order of the Court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**

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