

White v Hernandez

2026 NY Slip Op 31955(U)

May 6, 2026

Supreme Court, New York County

Docket Number: Index No. 161486/2023

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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NATHANIEL WHITE and ESTRELLA WHITE,

Plaintiffs,

INDEX NO. 161486/2023

MOTION DATE 10/03/2025

MOTION SEQ. NO. 001

- v -

ANNETTE HERNANDEZ, NEW YORK CITY TRANSIT
AUTHORITY, and METROPOLITAN TRANSPORTATION
AUTHORITY,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 6 - 13, 27 - 30 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

In this action arising out of a motor vehicle collision, plaintiffs Nathaniel and Estrella White allege that a New York City Transit Authority bus sideswiped their vehicle as the bus was attempting a left-hand turn.

Now, plaintiffs move for summary judgment in their favor as to the issue of liability, and for dismissal of the affirmative defense of contributory / comparative negligence, asserted by the New York City Transit Authority (NYCTA), and the Metropolitan Transportation Authority (MTA), and Annette Hernandez (collectively, Transit Defendants) (notice of motion [NYSCEF Doc. No. 6]). Transit Defendants oppose the motion.

BACKGROUND

According to the complaint, plaintiffs allege that on August 27, 2022, plaintiff Nathaniel White was operating a motor vehicle, in which plaintiff Estrella White was a passenger, at the intersection of West 42nd Street and West Street, when their vehicle was struck by a New York City bus (see plaintiff’s Exhibit 1, summons and complaint [NYSCEF Doc. No. 8] ¶ 144). Plaintiffs’ counsel clarified that the collision occurred as Hernandez attempted a left-hand turn at the aforesaid intersection (plaintiffs’ counsel’s affirmation in support of motion [NYSCEF Doc. No. 7] ¶7). As no depositions have taken place, plaintiffs submit an affidavit from Nathaniel White regarding the collision and the police accident report from the scene.

According to plaintiff Nathaniel White:

"I was the operator of a 2021 Ford motor vehicle bearing New York license plate HAY6634, traveling eastbound on West 42 Street at or near its intersection with West Street, in the County of New York, City and State of new York, on the 27th day of August 2022" (plaintiff's exhibit 3 [NYSCEF Doc. No. 10]).

Plaintiff Nathaniel White further states that he brought the "vehicle to a complete stop behind another vehicle at a red light" where he "was stopped in the traffic light for approximately one minute" (*id.*). While he was stopped, plaintiff Nathaniel White stated that a bus "bearing the New York license plate BE3497, operated by Annette Hernandez, and traveling westbound on West 42 Street, attempted to make a left turn" which resulted in "the bus [sideswiping] [plaintiffs'] vehicle on the driver's side" (*id.*).

In further support of the motion, plaintiffs submit a police accident report that was created at the scene. The report states, in relevant part:

Accident Description/Officer's Notes	AT TPO VEHICLE ONE (BLACK SUV) WAS HEADED EASTBOUND AT ABOVE LOCATION AND STOPPED AT A VEHICLE IN FRONT OF THEM AT A RED LIGHT WHEN VEHICLE 2 (BUS) FACING WESTBOUND MADE A LEFT TO GO SOUTHBOUND SIDE SWIPING VEHICLE 1 CAUSING THE DAMAGE NOTED IN REPORT. THERE WERE NO INJURIES IN THE COLLISION.
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(plaintiff's exhibit 2 [NYSCEF Doc. No. 9]).

In opposition to the motion Transit Defendants submit both an affidavit from the bus operator as well as an Accident Report that was prepared by the bus operator after the incident (Transit Defendants' Exhibit A [NYSCEF Doc. No. 30] Bus Operator Affidavit and Accident Report). In the Accident Report, Hernandez wrote:

Description of Accident (include directions of vehicles) I was making a left turn onto 7th Avenue from 42nd Street while waiting for light pedestrians to cross on coming traffic light change Bicycle taxis proceeded towards bus I could not proceed contact from vehicle #2, I heard it and have no knowledge how contact was made.

Hernandez states in the affidavit that the "information contained therein [the accident report] is a true an [sic] accurate description of how the incident happened" (Hernandez Affidavit, ¶ 4).

DICUSSION

"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]).

As a preliminary matter, the certified police accident report cannot be considered in evidence in support of plaintiffs’ motion for summary judgment. Although plaintiffs’ counsel argues that the police report contains admissions from defendant Hernandez (see plaintiff’s counsel’s affirmation in support of motion ¶ 17), the court agrees with defendants’ counsel that there is no indication that Hernandez made any admission to the officers who authored the report. As such, the certified police accident report is not admissible under the hearsay exception of a party admission.

Nevertheless, plaintiffs met their prima facie burden of demonstrating Hernandez’s negligence as a matter of law. Plaintiff Nathaniel’s affidavit essentially establishes that Hernandez violated Vehicle Traffic Law § 1163(a), which states:

“No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway *unless and until such movement can be made with reasonable safety*. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided” (emphasis added).

Furthermore, it has been well settled that “[a] driver must ‘make reasonable use of his or her senses ... and maintain a safe distance from other motor vehicles’” (*Wilson v Tillman*, 241 AD3d 459, 460 [1st Dept 2025] quoting *Miller v DeSouza*, 165 AD3d 550, 550 [1st Dept. 2018]).

In opposition, Transit Defendants have raised triable, material issues of fact warranting denial of summary judgment in plaintiffs’ favor.

Transit Defendants submitted the Accident Report prepared by bus operator defendant Hernandez. Viewing the Accident Report and Hernandez’s affidavit in the light most favorable to defendants, Hernandez appears to contend that her vehicle was struck while she was stopped, waiting for pedestrians, before completing the left-hand turn.

The conflicting narratives in plaintiff Nathaniel’s affidavit and Hernandez’s affidavit raise issues of credibility and material issues of fact as to which vehicle collided with the other, which warrants the denial of summary judgment (*Tibbs v De’Longhi Am. Inc.*, 234 AD3d 425 [1st Dept 2025] [reversing a grant of summary judgment based on conflicting testimony regarding a side swipe, demonstrating a material issue of fact]).

The court notes that Nathaniel White claims that his vehicle was stopped behind another vehicle at a red traffic light, whereas the Accident Report indicates that the damage to the bus was to the "mid section left side," i.e., the driver's side. It would strain credulity that Nathaniel White, who was purportedly traveling eastbound in his vehicle, could somehow have struck the driver's side of Hernandez's vehicle by traveling forward, if he had not already entered but failed to clear the intersection before Hernandez had started the left turn. Additionally, Nathaniel White claims that the incident occurred at the intersection of West 42nd Street and West Street, whereas Hernandez claims that the collision occurred on 42nd Street and 7th Avenue.

In light of the disputed issues of fact as to whether Hernandez negligently sideswiped plaintiffs' vehicle and issues of credibility of both drivers, summary judgment dismissing the affirmative defense of culpable conduct is also denied.

CONCLUSION

Based upon the foregoing documents, and reasoning, it is hereby **ORDERED** that plaintiffs' motion for summary judgment, as to the issue of liability, and the dismissal of Transit Defendants' affirmative defense is **DENIED**; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in IAS Part 21, 80 Centre Street Room 280, New York, NY on **September 3, 2026 at 11:30 a.m.**

ENTER:



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<u>5/6/2026</u>			<u>RICHARD TSAI, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		