

**Horacius v Pozo**

2026 NY Slip Op 31984(U)

May 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 530743/2025

Judge: Norma J. Jennings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 39

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**MARIE ELODIE HORACIUS,**

Index No.: 530743/2025

Plaintiff,

-against-

**JORGE LUIS POZO, FRANCHESKA ARMADA  
BIDO ARIAS, UBER TECHNOLOGIES, INC.,  
UBER USA, LLC, and RASIER-NY, LLC,**

Defendants.  
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**DECISION AND ORDER**

Recitation, as required by CPLR  
§2219(a) of the papers considered in  
review of this Motion:

**Papers**

Notice of Motion .....	1-2
Defendants' Opposition .....	3-4
Plaintiff's reply .....	5-6

Upon review of the foregoing papers and argument held on April 27, 2026, the Decision and Order on Plaintiff's motion for summary judgment pursuant to CPLR §3212 and §3211(b), motion sequence number 001, is as follows:

The Plaintiff Marie Elodie Horacius (hereinafter "Plaintiff") commenced this action to recover for injuries allegedly sustained in a rear-end collision that occurred on November 7, 2024, between the Plaintiff's vehicle and a vehicle owned and operated by Defendant Jorge Luis Pozo (hereinafter "Defendant Pozo"), at or near the intersection of Buffalo Avenue and Fulton Street, Brooklyn, New York<sup>1</sup>. Plaintiff alleges she was stopped at a red traffic light for approximately 5 seconds when her vehicle was rear-ended by the vehicle driven by Defendant Pozo, causing Plaintiff to sustain personal injuries. On the date of the accident Defendant Pozo was a cab driver who accepted ride requests on ride share platforms Uber and Lyft. On October 6, 2025, Defendants Uber Technologies, INC., Uber USA, LLC, and Rasier-NY, LLC (hereinafter "Uber Defendants") filed an answer with affirmative defenses and cross claims. On January 22, 2026, Defendants Francheska Armada Bido Arias and Defendant Pozo (collectively "Defendants Pozo and Arias") filed an answer with affirmative defenses and a cross claim.

Plaintiff moves pursuant to CPLR § 3212, against Defendants Pozo and Arias only, for summary judgment on the issue of liability, and pursuant to CPLR section 3211(b) to dismiss their affirmative defenses of contributory negligence, culpable conduct, assumption of risk, and failure to use a seatbelt. Plaintiff did not move to for summary judgment on liability against Uber Defendants and did not move to strike Uber Defendants' affirmative defenses. Plaintiff argues there are no triable issues regarding liability against Defendants Pozo and Arias because her

<sup>1</sup> Plaintiff alleges that the vehicle that struck her car in the rear was owned by Defendant Francheska Armada Bido Arias and operated by Defendant Jorge Luis Pozo. Defendant Francheska Armada Bido Arias and Defendant Jorge Luis Pozo collectively filed opposition to Plaintiff's motion. The affidavit of Defendant Pozo, submitted on behalf of both Defendants Arias and Pozo in opposition to Plaintiff's motion, states that Defendant Pozo is the owner and the operator of the vehicle in the subject rear end collision.

vehicle was struck in the rear by the Defendants' vehicle. In support of the motion, Plaintiff submitted an affidavit stating that at the time of the accident she was bringing her vehicle to a gradual stop due to a red traffic light and was stopped for approximately five seconds when her vehicle was struck in the rear. Plaintiff submitted photos of the impact and attested she was wearing her seat belt at the time of the accident.

In opposition, Defendants<sup>2</sup> submitted an affidavit, in which he states that at the time of the accident, Plaintiff accelerated when the traffic light turned green, he started moving his car forward when Plaintiff suddenly stopped, and he did not have enough time or distance to stop and avoid the impact. Defendant Pozo also stated when Plaintiff's car was stopped at the red light he observed her on the phone. In addition, Defendants argue Plaintiff's motion is premature because discovery, including the parties deposition, remain outstanding.

Uber Defendants submitted an attorney affirmation in opposition to Plaintiff's motion, in which it argues Plaintiff's motion was filed only against Defendants Pozo and Arias, therefore Uber's defenses should not be stricken. The Uber Defendants also argue Plaintiff's motion should be denied because discovery is not complete including depositions where testimony could reveal comparative negligence on the part of Plaintiff. Additionally, Uber Defendants argue that Plaintiff's motion relies on Plaintiff's self-fulfilling affidavit which raises triable issues of fact.

In reply, Plaintiff argues her motion is not premature and all the Defendants have failed to offer any proof that discovery would lead to relevant evidence which is exclusively within the knowledge and control of the Plaintiff. Plaintiff further argues she has shown prima facie entitlement to summary judgment on the issue of liability in this rear end collision case where Defendant Pozo failed to keep a safe distance and observe traffic violations which resulted in his vehicle rear ending Plaintiff's vehicle stopped at a red traffic light. Plaintiff contends she did not contribute to the accident and Defendants have failed to offer a non-negligent explanation for the collision to overcome the inference of negligence. Further, Plaintiff argues the Uber Defendants' opposition should be disregarded in its entirety because it is based solely upon an attorney's affirmation who has no personal knowledge of the facts surrounding the accident.

#### DECISION:

The driver of a vehicle approaching another from the rear is required to maintain a reasonably safe distance and rate of speed under prevailing conditions to avoid colliding with the other vehicle. *Fischetti v. Simonovsky*, 227 A.D.3d 670, 671 (2nd Dept. 2024). A rear end collision with a stopped or stopping vehicle creates a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring the operator of the rear car to rebut the inference of negligence by providing a nonnegligent explanation for the collision. *Diamond v. Comins*, 194 A.D.3d 784 (2nd Dept. 2021); *Orcel v. Haber*, 140 A.D.3d 937 (2nd Dept. 2016); *Gifford v. Consol. Edison Co. of New York*, 103 A.D.3d 773 (2nd Dept. 2013); *Martin v. Cartledge*, 102 A.D.3d 841 (2nd Dept. 2013); *Foti v. Fleetwood Ride, Inc.*, 57 A.D.3d 724 (2nd Dept. 2008); *Klopchin v. Masri*, 45 A.D.3d 737 (2nd Dept. 2007). "A nonnegligent explanation may include evidence of a mechanical failure, a sudden stop of the vehicle ahead, an unavoidable skidding on wet pavement, or any other

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<sup>2</sup> Defendant Francheska Armada Bido Arias and Defendant Jorge Luis Pozo collectively filed opposition to Plaintiff's motion.

reasonable cause.” *Grant v. Carrasco*, 165 A.D.3d 631 (2nd Dept. 2018); *Ortiz v. Hub Truck Rental Corp.*, 82 A.D.3d 725 (2nd Dept. 2011). “Although a sudden stop of the lead vehicle may constitute a nonnegligent explanation for a rear-end collision, vehicle stops which are foreseeable under the prevailing traffic conditions, even if sudden and frequent, must be anticipated by the driver who follows, since he or she is under a duty to maintain a safe distance between his or her vehicle and the vehicle ahead” *Quintanilla v. Mark*, 210 AD3d 713 (2nd Dept 2022).

Here, the Plaintiff stated in her affidavit she was stopped when her car was hit from the rear by the Defendant Pozo. Defendant Pozo did not deny hitting Plaintiff’s car in the rear, but alleges Plaintiff came to a sudden stop, and he could not avoid the impact. Plaintiff has established her prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating through her affidavit that her vehicle was stopped at the traffic light when Defendant’s vehicle struck hers from the rear. *Karim v. Proline Rental, LLC*, 222 A.D.3d 851 (2nd Dept. 2023); *Quintanilla v. Mark*, 210 A.D.3d 713 (2<sup>nd</sup> Dept. 2022); *Gifford v. Consol. Edison Co. of New York*, 103 A.D.3d 773, 774 (2<sup>nd</sup> Dept. 2013). Defendants Pozo and Arias failed to provide a nonnegligent explanation for the rear end collision and even conceded their vehicle’s “front bumper lightly tapped the rear of” Plaintiff’s vehicle. Defendant Pozo statement in his affidavit that the Plaintiff accelerated quickly and then abruptly came to a complete stop does not provide a nonnegligent explanation for striking the Plaintiff’s vehicle in the rear. *Fischetti v. Simonovsky*, 227 A.D.3d 670 (2nd Dept. 2024). Accordingly, Plaintiff’s motion for summary judgment on the issue of liability is granted against Defendants Pozo and Arias.

Plaintiff also moves to strike Defendants Pozo and Arias’ affirmative defenses of contributory negligence, culpable conduct, assumption of risk, and failure to wear a seatbelt. A plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence when moving for summary judgment on the issue of liability. *Rodriguez v. City of New York*, 31 N.Y.3d 312 (2018); *Diamond v. Comins*, 194 A.D.3d 784 (2nd Dept. 2021). However, “the issue of a plaintiff’s comparative negligence may be decided in the context of a summary judgment motion where the plaintiff moves to dismiss a defendant’s affirmative defense alleging comparative negligence” *Karim v. Proline Rental, LLC*, 222 A.D.3d 851 (2nd Dept. 2023). Not every rear-end collision is the exclusive fault of the rearmost driver. The frontmost driver also has the duty “not to stop suddenly or slow down without proper signaling so as to avoid a collision” *Trinidad v. Llapa*, 231 A.D.3d 1183 (2nd Dept. 2024). Therefore, where the frontmost driver also operates his or her vehicle in a negligent manner, the issue of comparative negligence is for a jury to decide *Gaeta v. Carter*, 6 A.D.3d 576 (2nd Dept. 2004); *Purcell v. Axelsen*, 286 A.D.2d 379 (2nd Dept. 2001).

Plaintiff established her prima facie entitlement to judgment as a matter of law dismissing the affirmative defense alleging failure to wear a seat belt by her affidavit, in which she stated that she was wearing a seat belt at the time of the accident and the Defendants failed to raise a triable issue of fact in opposition. *Maurice v. Donovan*, 235 A.D.3d 633 (2nd Dept. 2025); *see also Giwa v Bloom*, 154 AD3d 921, 923 (2nd Dept. 2017); *Rockman v Brosnan*, 242 AD2d 695, 696 (2nd Dept. 1997).

However, Plaintiff’s motion to dismiss Defendants’ Pozo and Arias’ affirmative defenses regarding contributory negligence is denied as the evidence by Defendant Pozo in his affidavit that

prior to the accident, the Plaintiff “appeared to be using her phone while stopped at the red light,” quickly accelerated when the light turned green, and then abruptly came to a stop, raised a triable issue of fact as to whether Plaintiff was comparatively at fault for the accident, thereby supporting the denial of that branch of Plaintiff’s motion which was for summary judgment dismissing the affirmative defenses alleging comparative negligence. *Martin v. Copado-Esquivel*, 226 A.D.3d 668, 670 (2nd Dept. 2024) Defendant Pozo demonstrated the existence of triable issues of fact as to whether Plaintiff was distracted by her cell phone just prior to the accident, whether Plaintiff was comparatively at fault because of such use, and whether Defendant’s negligence was the sole proximate cause of the accident. *Trinidad v. Llapa*, 231 A.D. 3d 1183 (2nd Dept. 2024).

Defendants also argue Plaintiff’s motion should be denied because it is premature and without merit. A party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant. *Quintanilla v. Mark*, 210 A.D.3d 713 (2nd Dept. 2022); *Skura v Wojtowski*, 165 AD3d 1196 (2nd Dept. 2018); *Antonyshyn v Tishman Constr. Corp.*, 153 AD3d 1308 (2nd Dept. 2017). “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion” *Quintanilla v. Mark*, 210 A.D.3d 713 (2nd Dept. 2022); *Branach v Belvedere VIII, LLC*, 189 AD3d 1531 (2nd Dept. 2020); *Sterling Natl. Bank v Alan B. Brill, P.C.*, 186 AD3d 515 (2020).

Here, the Defendants state discovery remains outstanding, including depositions of all of the parties which the Uber Defendants argue there is a “possibility” the testimony during depositions “could” reveal evidence relevant to the case and support their defense to this action. However, mere hope or speculation that evidence might be uncovered is insufficient to deny a motion for summary judgment. See *Liddell v Morrison*, 204 AD3d 987 (2022); *Sapienza v Harrison*, 191 AD3d 1028 (2021). Additionally, Defendants failed to demonstrate that facts essential to justify opposition to the motion were exclusively within the knowledge and control of Plaintiff.

Accordingly, it is **ORDERED**, that Plaintiff’s Motion for Summary Judgment on liability against Defendants Arias and Pozo is **GRANTED** and Defendants’ Arias and Pozo’s fourth affirmative defense alleging failure to properly use a seat belt is **STRICKEN**. The remainder of Plaintiff’s motion seeking to dismiss Defendants’ Arias and Pozo’s affirmative defenses for contributory negligence, culpable conduct, and assumption of risk is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: May 6, 2026  
Brooklyn, NY



HON. NORMA J. JENNINGS, J.S.C.

**Hon. Norma J. Jennings, J.S.C.**