

**Marciano v Metropolitan Transp. Auth.**

2024 NY Slip Op 34313(U)

December 6, 2024

Supreme Court, New York County

Docket Number: Index No. 151329/2024

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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RACHEL MARCIANO,

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY, NEW  
YORK CITY TRANSIT AUTHORITY, MTA BUS COMPANY,  
MABSTOA, LUIS CASTILLO JIMENEZ, HERNAN  
FERNANDEZ CHIMBORAZO, and DONAFRIO GENERAL  
CONTRACTORS CORP,

Defendants.

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INDEX NO. 151329/2024  
MOTION DATE 10/28/2024  
MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 27-36  
were read on this motion to/for JOIN FOR TRIAL.

Upon the foregoing documents, it is **ORDERED** that the motion for a joint trial and coordinated discovery by defendants Hernan Fernandez Chimborazo and D'onafrio General Contractors Corp., sued herein as Donafrio General Contractors Corp. is **GRANTED WITHOUT OPPOSITION**, and the above-captioned action, along with *Venus Salgado v D'onofrio General Contractors Corp. et al*, Index No. 153756/2024, *Mohammed Habib Ullah v The New York City Transit Authority et al*, Index No. 153789/2024 shall be coordinated for discovery and jointly tried as to liability with *Yajaira Ortiz v Metropolitan Transportation Authority et al*, Index No. 156214/2024, pending before this court, and *Hernan Chimborazo Fernandez et al v. New York City Transit Authority et al*, Index No. 521055/2024; and it is further

**ORDERED** that, within 30 days from the entry of this order, movants' counsel shall serve a certified copy of this order with notice of entry upon the Clerk of the Supreme Court, Kings County, and shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of the Supreme Court, Kings County to arrange for the effectuation of the transfer to this Court in an efficient manner; and it is further

**ORDERED** that service upon the Clerk of the Supreme Court, Kings County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

**ORDERED** that the Clerk of the Supreme Court, Kings County, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the action

*Chimborazo Fernandez et al v. New York City Transit Authority et al*, Index No. 521055/2024, Supreme Court, Kings County; and it is further

**ORDERED** that the Clerk of the Supreme Court, Kings County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

**ORDERED** that, within 30 days from entry of this order, movants' counsel shall serve a copy of this order with notice of entry upon the Clerk of the Supreme Court, New York County; and it is further

**ORDERED** that such service upon the Clerk of the Supreme Court, New York County shall be made in accordance with the procedures set forth in Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/suptctmanh/Efil-protocol.pdf>);<sup>1</sup> and it is further

**ORDERED** that, upon receipt of the case file from the Clerk of the Supreme Court, Kings County, the Clerk of this court shall, without further fee, assign a New York County index number to the matter transferred pursuant to this order and shall file under this number the documents transferred; and it is further

**ORDERED** that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred to this court pursuant to this order under the New York County index number assigned to the transferred matter in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the transferred documents; and it is further

**ORDERED** that, within 30 days from entry of this order, movants' counsel shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office, together with a Request for Judicial Intervention ("RJI") in *Fernandez et al v. New York City Transit Authority et al*, the action that is transferred to this county pursuant to this order or, if an RJI had already been filed in that action, with a copy of that RJI (in which event, no further fee shall be imposed); and it is further

**ORDERED** that the Clerk of the General Clerk's Office shall assign the transferred action to the undersigned; and it is further

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<sup>1</sup> Pursuant to Section J, service upon the County Clerk of Supreme Court, New York County is done by filing with NYSCEF a completed *Notice to the County Clerk - CPLR § 8019 (c)* (NYSCEF Form EF-22, available on the NYSCEF site) (*id.*).

**ORDERED** that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness (to each of which the filer shall annex a copy of this order with notice of entry) with the General Clerk's Office in each of the following actions:

*Rachel Marciano v Metropolitan Transp. Auth.*, Index No. 151329/2024;  
*Venus Salgado v D'onofrio General Contractors Corp.*, Index No. 153756/2024;  
*Mohammed Habib Ullah v New York City Tr. Auth.*, Index No. 153789/2024;  
*Yajaira Ortiz v Metropolitan Transp. Auth.*, Index No. 156214/2024; and  
*Hernan Chimborazo Fernandez v New York City Tr. Auth.*, (New York County Index No. to be assigned)

the Clerk of the General Clerk's Office shall place the aforesaid actions upon the trial calendar for a joint trial as to liability before the undersigned or other Justice of this court; and it is further

**ORDERED** that such service upon the General Clerk's Office shall be made in accordance with the procedures set forth in Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (link above);<sup>2</sup> and it is further

**ORDERED** that the parties in the joined actions are directed to appear for joint preliminary conferences on **APRIL 3, 2025 at 10:30 a.m.** in IAS Part 21, 80 Centre Street Room 280, New York, New York. **This supersedes and overrides any other court appearance date previously given by court staff to counsel who appeared in court on December 5, 2024.**

According to complaint, on August 10, 2023, at approximately 11:15 AM, plaintiff Rachel Marciano was a passenger in a bus owned and operated by defendants Metropolitan Transportation Authority (MTA), New York City Transit Authority (NYCTA), MTA Bus Company (MTA Bus Co), Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) and Luis Castillo Jimenez, which was involved in a collision with a motor vehicle owned and operated by defendants Hernan Fernandez Chimborazo and D'onafrio General Contractors Corp, at Amsterdam Avenue and West 82<sup>nd</sup> Street (see NYSCEF Doc No. [complaint] ¶¶ 23, 27, 33, 37, 43, 47, 53, 57, 63, 67, 89, 93, 99, 113, 115).

By decision and order of this court dated September 9, 2024 this action was joined for trial and discovery with *Venus Salgado v D'onofrio General Contractors Corp. et al*, Index No. 153756/2024, *Mohammed Habib Ullah v The New York City Transit*

<sup>2</sup> Pursuant to Section J, service upon the Clerk of the General Clerk's Office is done by posting to NYSCEF a copy of the order, with notice of entry (if required by the court), "using the NYSCEF document type 'Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order'" and the filer must provide "as additional information (in the 'Additional Document Information' field) a brief description of the type of order being submitted (e.g., 'Order of Consolidation' . . . ).

*Authority et al*, Index No. 153789/2024 (see NYSCEF Doc. No. 22). Salgado and Ullah claim to be other passengers in the same bus involved in the collision.

Defendants Hernan Fernandez Chimborazo and D'onafrio General Contractors Corp., sued herein as Donafrio General Contractors Corp., now move to join two more cases for trial and coordinated discovery--*Yajaira Ortiz v Metropolitan Transportation Authority et al*, Index No. 156214/2024, and *Hernan Chimborazo Fernandez et al, v. New York City Transit Authority et al*, Index No. 521055/2024.

*Ortiz* is already assigned to the Transit Part, whereas *Fernandez* is a case currently pending in Supreme Court, Kings County, which must be transferred to this court in order for discovery to be coordinated.<sup>3</sup> The motion is unopposed.

It is undisputed that all five cases share common issues of law and fact. *Ortiz* claims to be a passenger in the same bus involved in the collision (see movant's exhibit D in support of motion ¶¶ 9, 36-37 [NYSCEF Doc. No. 32] [*Ortiz* complaint]). *Fernandez* claims to be the operator or the other motor vehicle involved in the collision (see movants' exhibit E in support of motion ¶¶ 4, 9-12 [NYSCEF Doc. No. 33] [*Fernandez* complaint]).

Given this court's calendar congestion, the next available date for joint preliminary conferences and a status conference is in April 2025. Additionally, an earlier date is not prudent given the need to transfer *Fernandez* to this county.



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<u>12/6/2024</u>			<u>RICHARD TSAI, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE	

<sup>3</sup> This court notes that a motion for a transfer of venue to New York County is pending in *Fernandez*.