



# New York City Transit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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**ORDER WITH NOTICE  
OF ENTRY**

NIGEL BALKISSOON, E.B., An Infant By His Mother and  
Natural Guardian, LATASHA PUE and LATASHA PUE,  
Individually,

Plaintiffs,

-against-

Index No.: 522210/2020

NEW YORK CITY TRANSIT AUTHORITY and ERICK  
E. ALVAREZ,

MOTION SEQ's: 003, 004, 005  
CALENDAR #'s 6, 7, 8

Defendants.

-----X

PLEASE TAKE NOTICE that the within is a true copy of an Order of the Honorable GINA  
ABADI, J.S.C., dated March 13, 2024, and entered in the Office of the Clerk of this within named  
Court on April 8, 2024.

Dated: Syosset, New York  
April 8, 2024

**PRESTON LAW FIRM, P.C.**

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At an I.A.S. Trial Term, Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 13 day of MARCH 2024

P R E S E N T :

Hon. GINA ABADI  
Justice

NIGEL BALKISSON, E. B. ETAL

Plaintiff(s)

Cal. No. 846,7,8

Index No. 522210/2020

- against -

NYCFA, ET. AL.

Defendant(s)

SEQ 003

003  
W48-15  
0155475  
R 178-179

The following papers numbered 1 to

read on this motion

Papers Numbered

Notice of Motion - Order to Show Cause

and Affidavits (Affirmations) Annexed \_\_\_\_\_

Answering Affidavit (Affirmation) \_\_\_\_\_

Reply Affidavit (Affirmation) \_\_\_\_\_

\_\_\_\_\_ Affidavit (Affirmation) \_\_\_\_\_

Pleadings- Exhibits \_\_\_\_\_

Stipulations - Minutes \_\_\_\_\_

Filed Papers \_\_\_\_\_

APPROX ORAL ARGUMENT  
DEFENDANTS MOTION FOR SUMMARY JUDGEMENT  
AS TO ALL THREE PLAINTIFFS IS GRANTED.  
AS TO PLAINTIFF E.B., DEFENDANTS DEMONSTRATED  
PRIMA FACIE ENTITLEMENT TO SUMMARY JUDGEMENT  
IN THAT E.B. FAILED TO SUFFER ANY SERIOUS  
INJURY. IN OPPOSITION PLAINTIFF FAILED  
TO RAISE ANY TRIABLE ISSUES OF FACT.

At E.B.'s EBT on March 16, 2020, E.B. stated that he had no difficulty dressing or bathing after the accident (p.45) and participated in recess a week after the accident including playing soccer, football, and basketball (p.44). E.B. stated that as of the time of the E.B.T, E.B. was playing basketball, soccer, working out, going on a workout bicycle two hours a day (p.14).

For Clerks use only

MG

MD \_\_\_\_\_

Motion Seq. #

3, 4, 5

E.B. stated that after the accident he had headaches for a few months or weeks but that the headaches went away (p. 39).

E.B. stated that at the time of the E.B.T, the only pain he was having was back pain (p.43), sometimes (p.38).

E N T E R

See Page 3

J.S.C.

PAGE 2

INDEX# 522 210 --2020

DATE 3-13-24 MISCEF

PLAINTIFF BALKISSON vs DEFENDANT NYCTA

M 56-66  
D 134-154  
R 176-177

004

DEFENDANT'S DEMONSTRATED THAT PLAINTIFF LATASHA PUE FAILED TO SUFFER ANY SERIOUS INJURY. IN OPPOSITION, THE AFFIRMATION OF DR. HAFTEL FAILED TO RAISE ANY ISSUE OF FACT SINCE DR. HAFTEL WAS NOT INFORMED OF PLAINTIFF'S INTERVENING ACCIDENT OF 2021 OR 2022 RENDERING HIS REPORT SPECULATIVE.

At her EBT, plaintiff testified that following the 2021 or 2022 accident, she experienced a headache, neck ache, and sharp pains going through her body (EBT p. 43) including pains in her leg (p. 44). Plaintiff also stated in her affidavit that following the 2021/2022 accident she experienced headaches, neck ache,

and pains through her body (para. 12). Dr. HafTEL's failure to acknowledge that plaintiff was

involved in an intervening accident in which she experienced pain through her body, rendered speculative his conclusion that the injuries he noted were the result of the subject accident. (See, *Allyn v Hanley*,

004 & AD3d 470 [2d Dept 2003]).

MISCEF  
M 96-107  
D 108-132  
R 180-18

DEFENDANT'S DEMONSTRATED PLAINTIFF MEL BALKISSON FAILED TO SUFFER ANY SERIOUS INJURY. IN OPPOSITION THE AFFIRMATION OF DR. HAFTEL FAILED TO RAISE ANY MATERIAL ISSUE OF FACT SINCE DR. HAFTEL WAS NOT INFORMED OF PLAINTIFF'S PRIOR ACCIDENT BETWEEN 2012 AND SEPTEMBER 20, 2019 RENDERING HIS REPORT SPECULATIVE.

ENTERED/SO ORDERED

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JSC

PAGE 2

  
A M C T A

PAGE 2

INDEX# 52210/2020 --

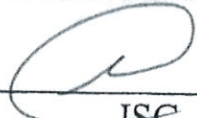
DATE 3-13-24

PLAINTIFF Balkisson vs DEFENDANT NYCTA

At his EBT, plaintiff testified that he was involved in two prior accidents before the subject 2019 accident - one in New York in 2011 and the other in Georgia after the 2011 accident and before the subject 2019 accident. Plaintiff testified that in the Georgia accident, the driver's side of the vehicle was hit (p. 51), the airbag deployed (p. 52), he sustained injuries to his knee and lower back (p. 52), he went to the hospital for treatment (p. 52), and attended physical therapy as a result of the injuries he sustained in that accident (p. 53). Dr. Hafel's failure to address the Georgia accident rendered his findings that plaintiff's current injuries were causally related to the 2019 accident mere speculation as to his findings that the subject 2019 accident exacerbated the injuries of plaintiff's 2011 accident (See *Allyn v Hanley*, 2 AD3d 470 [2d Dept 2008]; see also *Wallace v Adam Rental Transp., Inc.*, 68 AD3d 857 [2d Dept 2009]).

2024 APR - 5 A 10: 58  
 FILED  
 KINGS COUNTY CLERK

ENTERED/SO ORDERED

  
 JSC

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JEN. GINA ADALI  
 J.S.C.