SUPREME COURT
STATE OF NEW YORK : COUNTY OF ERIE

TOMMY PARKER,

Plaintiff,

vs.

DECISION & ORDER
Index No. 818566/2018

NIAGARA FRONTIER TRANSPORTATION AUTHORITY and LYDIA ABID,

Defendants.

BEFORE: **HON. TIMOTHY J. WALKER, Presiding Justice**

APPEARANCES: **CELLINO & BARNES, P.C.**
Stephen C. Ciocca, Esq., Of Counsel
Attorneys for Plaintiff

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
John P. DePaolo, Esq., Of Counsel
Attorneys for Defendants

WALKER, J.

Plaintiff has applied, pursuant to CPLR 3212, for partial summary judgment on the issue of negligence related to the happening of the motor vehicle accident underlying this action (the "Incident"). Defendants have cross-moved for summary judgment on the issue of negligence and thereby seek the dismissal of the Complaint, with prejudice.

The Incident occurred on September 7, 2018, when the bus operated by Defendant, Lydia Abid ("Abid"), came into contact with the rear passenger-side of the vehicle operated by

Plaintiff, as Plaintiff made a stop as he attempted a left hand turn into an underground parking garage (NYSCEF Doc. No. 21 p. 56).

Both parties have applied for summary judgment on the issue of negligence, contending that the other party was negligent in their operation of their respective motor vehicles, thus solely causing the Incident.

It is well settled that a rear-end collision with a stopped vehicle establishes a *prima facie* case of negligence on the part of the driver of the vehicle that struck the rear of the lead vehicle (*Herdendorf v. Polino*, 43 AD3d 1429 [4th Dept 2007]). In the case of a rear-end collision, the burden of proof shifts from the plaintiff to the defendant to provide a non-negligent explanation for the collision (*Id*.).

Plaintiff relies on authority from the First Department which holds that "a sudden stop, standing alone, is insufficient to rebut the presumption that the rearmost driver was negligent and the stopped vehicle was not negligent" (*Giap v. Haiti Son Pham*, 159 A.D.3d 484 [1st Dept. 2018]). However, the First Department's view of sudden stops is not as rigid as Plaintiff suggests. In *Baez-Pena v. MM Truck and Body Repair, Inc.*, the First Department clarified that the "allegation that the lead vehicle suddenly stopped is insufficient to rebut the presumption of negligence on the part of the rear-ending vehicle . . . is simply not accurate," and that such cases are to be decided on a case-by-case basis according to their specific facts (151 AD3d 473, 476 [1st Dept 2017]).

More pointedly, the Fourth Department has held that "[o]ne of several non-negligent explanations for a rear-end collision is a sudden stop of the lead vehicle . . . , and such an explanation is sufficient to overcome the inference of negligence and preclude an award of summary judgment " (*Tate v. Brown*, 125 AD3d 1397 [4th Dept 2015]).

Abid testified, in relevant part, as follows at her deposition: she was aware of the Plaintiff's vehicle slowing down, as indicated by the illumination of the turning signal and brake

lights (NYSCEF Doc. No. 22 p. 45); she was also aware that a bus typically takes longer to stop than automobiles (*Id*., at pp. 102-03; she applied the brakes and swerved slightly to the right in order to try and avoid Plaintiff's vehicle (*Id*., at p. 49); and Plaintiff stopped suddenly and without warning in front of her (*Id*., at p. 48). She contends that was unable to avoid the Incident, because of Defendant's sudden stop (*Id.*, at pp. 48-51).

However, Plaintiff also testified that he was required to stop suddenly, because the vehicle in front of him stopped unexpectedly and began driving in reverse (NYSCEF Doc. No. 21, p. 56). While both parties contend that the vehicles in front of them stopped suddenly, Plaintiff's vehicle did not strike the vehicle that stopped suddenly in front of him, but the bus did strike Plaintiff's vehicle.

In light of the foregoing, issues of material fact exist with respect to the facts and circumstances regarding both parties' contentions underlying the reasons why they were each required to stop suddenly.

Moreover, whether the facts and circumstances of this matter rise to the level of an emergency, thus enabling Defendants to assert the emergency doctrine as a complete defense to Plaintiffs' claims, is a question to be determined by the jury, assuming, upon hearing and considering the trial testimony, the Court permits the question to reach the jury (*Michael v. Wagner*, 151 AD3d 1574 [4th Dept 2017]).

Accordingly, it is hereby

ORDERED that the Plaintiff's motion for partial summary judgment on the issue of negligence is denied, and it is further

ORDERED, that Defendants' cross motion for summary judgment seeking dismissal of the Complaint, with prejudice, is also denied.

This constitutes the Decision and Order of this Court. Submission of an order by the Parties is not necessary. The delivery of a copy of this Decision and Order by this Court shall not

constitute notice of entry.

Dated: July 24, 2020
Buffalo, New York

HON. TIMOTHY J. WALKER, J.C.C.
Acting Supreme Court Justice