NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 14

Case Disposed ❑
Settle Order ❑
Schedule Appearance ❑

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

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CHARLES NIEVES, Jr.,

Index №. 26611/2018E

-against-

Hon. **BEN R. BARBATO,**

HUNTER EMS, INC., et al.,

Justice.

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The following papers numbered 1 to _____ Read on this motion,
Noticed on and duly submitted as No. ____ on the Motion Calendar of **AUGUST 20, 2020**

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Respectfully Referred to: _____

Dated: _____

Upon the foregoing papers this motion is decided in accordance with the annexed memorandum decision.

Dated: 9/29/2020

Hon. _____
BEN R. BARBATO, J.S.C.

[*1]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX: PART 14

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Charles Nieves, Jr.,

Decision/Order

Plaintiff

Index No.:26611/2018E

-against-

Hunter EMS, Inc., et al.,

Defendants.

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Plaintiff's motion pursuant to CPLR 3212, for summary judgment on the issue of liability and for dismissal of defendants' affirmative defense as to plaintiff's culpable conduct, is granted.

Plaintiff commenced the instant action to recover for injuries he allegedly sustained in a motor vehicle accident that occurred on December 7, 2017 on the Northbound Major Deegan Expressway at its intersection with Lincoln Avenue, Bronx, NY. Plaintiff now seeks summary judgment on the basis that his vehicle was struck in the rear by a vehicle owned and operated by the defendants. In support of his motion plaintiff submitted the pleadings, police report, incident report and the transcript of plaintiff's and defendant's deposition testimony.

"A rear-end collision with a stationary vehicle creates a prima facie case of negligence requiring judgment in favor of the stationary vehicle unless defendant proffers a non-negligent explanation for the failure to maintain a safe distance ... A driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself [or herself] and cars ahead of him [or her] so as to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*LaMasa v Bachman,* 56 AD3d 340, 340 [1st Dept 2008]). A rear-end collision constitutes a prima facie case of negligence against the rearmost driver in a chain confronted with a stopped or stopping the vehicle (*see Cabrera v Rodriguez,* 72 AD3d 553 [1st Dept 2010]).

Vehicle and Traffic Law § 1129(a) states that a "driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of

such vehicles and the traffic upon and the condition of the highway" (*see Darmento v Pacific Molasses Co.*. 81 NY2d 985, 988 [1993]). Based on the plain language of the statute, a violation is evident when a driver follows another too closely without adequate reason and that conduct results in a collision (*see id.).*

In opposition to plaintiff's prima facie showing of entitlement to judgment as a matter of law on the issue of defendants' liability, defendants failed to raise triable issues of fact. In opposition to plaintiff's prima facie showing, defendant asserts that there is a question of fact as to whether they were faced with an emergency situation *(see Rivera v New York City Transit Auth.,* 77 NY2d 322, 327 [1991]). The emergency doctrine, however, is not available where the circumstances are of the defendant's making *(see Caristo v Sanzone,* 96 NY2d 172 [2001]). A driver who follows another vehicle too closely may not invoke the emergency doctrine *(see Herbert v Morgan Drive-A-Way,* 202 AD2d 886 [3rd Dept 1994] [Yesawich, J., dissenting], *revd for the reasons stated by the dissent at the Appellate Division* 85 NY2d 895 [1995]). "[B]ecause trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead of them ... [a] trailing driver's conduct in failing to leave reasonable distance creates the possibility that a sudden stop will be necessary" *(Shehab v Powers,* 150 AD3d 918, 920 [2d Dept 2017]). Given defendants' testimony that they were following the vehicle in front of them at a distance of at least two car length, the sudden stop of the vehicle in front of them vehicle did not constitute an emergency not of their making *(see* Vehicle and Traffic Law § 1129[a]; *Matias v Grose,* 123 AD3d 485 [1st Dept 2014]).

Defendants thus failed to rebut the presumption of their negligence *(see Dattilo v Best Transp. Inc.,* 79 AD3d 432 [1st Dept 2010]; *see also Buchanan v Keller,* 169 AD3d 989, 992 [2d Dept 2019]; *Little v Morillo,* 168 AD3d 433 [1st Dept 2019]; *Vasquez v Chimborazo,* 155 AD3d 432 [1st Dept 2017]; *Torres v Kalmar,* 136 AD3d 457 [1st Dept 2016]).

In addition, defendants' contention that plaintiff failed to meet his prima facie burden because the deposition transcripts are not signed and are unsworn has no merit, as the transcripts are certified by the Court Reporter. (*Gomez v Shop-Rite of New Greenway,* 110 AD3d 483 [1st Dept. 2013] [appropriate to rely on unsigned, certified deposition transcript where transcript was not challenged as inaccurate]); *Pevzner v 1397 E. 2nd, LLC,* 96 AD3d 921 [2d Dept. 2012] ["Supreme Court providently reviewed the unsworn deposition transcripts submitted in support of

the motion, since they were certified by the reporters and the plaintiffs did not challenge their accuracy."]).

As to the aspect of plaintiff motion seeking dismissal of defendants' affirmative defense of culpable conduct, plaintiff made a prima facie showing that he bears no such fault (*see Soto-Maroquin v Mellet,* 63 AD3d 449 [1st Dept 2009]), and defendants failed to raise a triable issue of fact.

Accordingly, plaintiff's motion for summary judgment on the issue of liability is granted.

Plaintiff shall serve a copy of this order, together with notice of entry, on the defendants within 30 days of the date of entry of this order.

This constitutes the decision and order of the Court.

Dated: 9/29/2020

HON. Ben R. Barbato
Justice, Supreme Court