SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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APRIL ALLENDE,

Plaintiff,

- v -

METROPOLITAN TRANSIT AUTHORITY, METROPOLITAN TRANSIT AUTHORITY BUS COMPANY and SHANE HILL,

Defendants.

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INDEX NO. 162482/2023

MOTION DATE 02/20/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16-25, and 29, 30-36

were read on this motion to/for JUDGMENT – SUMMARY.

In this action, plaintiff April Allende alleges that, while she was a passenger in a double-parked vehicle, a bus owned by defendants Metropolitan Transit Authority and Metropolitan Transit Authority Bus Company, and operated by defendant Shane Hill, rear-ended plaintiff's vehicle.

Plaintiff now moves for partial summary judgment on the issue of liability. Defendants oppose the motion.

BACKGROUND

Plaintiff April Allende alleges that, on March 14, 2023, at approximately 3:30 PM, she was a front seat passenger in her own 2018 Nissan motor vehicle, which was double-parked in the leftmost lane of 3rd Avenue near its intersection with East 91st Street in Manhattan (plaintiff's affidavit [NYSCEF Doc. No. 19] ¶¶ 3-4). Plaintiff further alleges that, at approximately this time, a 2008 Toyota bus owned by defendants Metropolitan Transit Authority and Metropolitan Transit Authority Bus Company, and operated by defendant Shane Hill, struck the vehicle in which she was a passenger in the rear (*id.* at ¶ 5; plaintiff's Exhibit A [NYSCEF Doc. No. 20], complaint ¶¶ 12-14). Plaintiff claims that she sustained serious personal injuries and that her car was damaged (complaint ¶ 16; plaintiff's affidavit ¶ 6).

Defendants deny all allegations and admit only that "what purported to be a notice of claim was received by defendants [MTA and Bus Company]," that "adjustment and payment by the [defendants] has been refused," and that "a statutory hearing was held" (plaintiff's Exhibit B [NYSCEF Doc. No. 21], answer ¶ 3).

At plaintiff's statutory hearing, she stated her father was the operator of the vehicle in which plaintiff was a passenger at the time of the accident (defendants' Exhibit B [NYSCEF

Doc. No. 34], statutory hearing transcript of plaintiff, at 27, line 23). Plaintiff claimed that while her vehicle was double parked, her father was inside a nearby CVS (*id.* at 33, line 6). Plaintiff also stated that she was sitting in the front passenger seat with the seat reclined, and that she was not wearing her seatbelt (id. at 33, line 14). Plaintiff claims that, immediately prior to the accident she did not see the bus, but heard "the sound of brakes screeching" approximately "five to ten seconds" before the incident occurred (id. at 41, lines 24-25, at 42, lines 18-19).

In defendant bus operator Hill's affidavit, he claims that the bus he was operating entered "the intersection of 3rd Avenue and East 91st Street, and the vehicle traveling to my right suddenly cut in front of my bus into my lane and activated their brakes. At no time did the vehicle activate their turn signals" (defendants' Exhibit A [NYSCEF Doc. No. 33], affidavit of Shane Hill ¶ 4). Hill further claims that, in "a frantic effort to avoid a collision," he "quickly moved my bus into the left-most lane on 3rd Avenue and successfully avoided a collision with that vehicle" (*id.*). Hill then claims that "immediately after moving my bus into the left-most lane. . . I noticed a double-parked car obstructing the left-most lane of travel. I tried to quickly maneuver my bus slightly back into the second lane of travel to avoid a collision with the double-parked vehicle but was unsuccessful," so "the driver's side front fender of my bus clipped the rear-passenger side fender of the double-parked vehicle" (*id.* at ¶¶ 4-5). In their affirmation in opposition, defendants claim that plaintiff was negligent in obstructing the roadway (affirmation in opposition [NYSCEF Doc. No. 32] ¶ 20).

Plaintiff now moves for summary judgment on the issue of liability on the theory that plaintiff's injuries were caused by "defendants' negligence in the ownership, operation and control of their motor vehicle on March 14, 2023" (affirmation in support [NYSCEF Doc. No. 18] ¶ 4).

DISCUSSION

> "On a motion for summary judgment, the moving party must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. If the moving party produces the required evidence, the burden shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action"

(*Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 175 [2019] [internal citations and quotation marks omitted]). On a motion for summary judgment, "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks omitted]).

"A rear-end collision with a stopped vehicle, or one slowing down, establishes a prima facie case of negligence by the operator of the rear-ending vehicle, unless he or she gives an adequate nonnegligent explanation for the accident" (*Alvarez v Bracchitta*, 210 AD3d 458, 459 [1st Dept 2022]). Here, plaintiff has established a prima facie case of negligence on the part of defendants by showing that defendants' vehicle hit plaintiff's stopped vehicle in the rear (plaintiff's affidavit [NYSCEF Doc. No. 19] ¶ 4).

In opposition, defendants argue that plaintiff's motion is premature, in that Hill's deposition has not yet been held (affirmation in opposition [NYSCEF Doc. No. 32] ¶ 25). They also assert that Hill was faced with an emergency situation not of his own making, which is a non-negligent explanation for the rear-end collision. Finally, defendants argue that there is an issue of fact as to whether the negligence of plaintiff's father was a proximate cause of the accident, as it was double-parked in a moving lane (affirmation in opposition [NYSCEF Doc. No. 32] ¶ 5).

Contrary to defendants' argument, summary judgment is not premature, "since defendants have personal knowledge of the facts" and are thus responsible for "laying bare their proof and presenting evidence sufficient to raise a triable issue of fact" (*Thompson v Pizzaro*, 155 AD3d 423, 423 [1st Dept 2017]). The issue of whether the negligence of a non-party could also be a substantial factor in causing the collision is irrelevant to the issue of whether Hill's actions were negligent, as a matter of law.

The emergency doctrine

> "recognizes that when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided the actor has not created the emergency"

(*Caristo v Sanzone*, 96 NY2d 172, 174 [2001] [internal citations and quotation marks omitted]). Where the emergency doctrine is invoked, "[t]he existence of an emergency and the reasonableness of a driver's response thereto generally constitute issues of fact" that are left to the determination of the factfinder (*Dalton v Lucas*, 96 AD3d 1648, 1649 [4th Dept 2012]).

Generally speaking, "the emergency doctrine does not apply to typical accidents involving rear-end collisions because trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead" (*Lowhar-Lewis v Metropolitan Transp. Auth.*, 97 AD3d 728, 729 [2d Dept 2012]). However, "courts have consistently held that the emergency doctrine may protect a driver from liability where the driver, through no fault of his or her own, is required to take immediate action in order to avoid being suddenly cut off" (*Maisonet v Roman*, 139 AD3d 121, 124 [1st Dept 2016]; *Santana v Metropolitan Transp. Co.*, 170 AD3d 551 [1st Dept 2019]; *see also Brooks v New York City Tr. Auth.*, 19 AD3d 162, 163 [1st Dept 2005]).

In *Maisonet*, the defendants argued that the court below erred in granting the plaintiff's motion for summary judgment, because they had a valid emergence doctrine defense. The driver of the defendants' vehicle averred that he was driving under the speed limit, that he had the right-of-way, and that he had been traveling a safe distance behind the vehicle directly in front of him, when a vehicle suddenly turned left in front of him (*Maisonet*, 139 AD3d at 123-124). To avoid the car making the left turn, the driver swerved to the right, but since there was a subway column to the right, he was forced to swerve back to the left, striking the back of the plaintiff's moving

vehicle. The Appellate Division, First Department ruled that the defendants raised triable issues of fact as to a defense based on the emergency doctrine.

Here, defendants have raised triable issues of fact as to the applicability of the emergency doctrine, which would rebut the presumption of negligence against them (*see* affirmation in opposition [NYSCEF Doc. No. 32] ¶¶ 12-13). Like *Maisonet* and *Santana*, this is a situation in which defendants may invoke emergency doctrine even in the case of a rear-ending accident (*Maisonet*, 139 AD3d 121; *Santana*, 170 AD3d 551). Hill's assertation that the nonparty vehicle that cut off Hill's bus could be viewed as "a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration," requiring that the actor "make a speedy decision without weighing alternative courses of conduct." Hill's reaction to swerve into the lane of plaintiff's vehicle presents triable issues of fact as to whether his actions were "reasonable and prudent in the emergency context" (*Caristo*, 96 NY2d at 174).

In reply, plaintiff argues, "It is completely foreseeable, especially while driving in New York City, that you may be cut off by another vehicle on the road" (reply affirmation of plaintiff's counsel ¶ 6 [NYSCEF Doc. No. 36]). However, the Appellate Division, First Department rejected a similar argument in *Jones v New York City Transit Authority*, stating, "That Garcia [the bus driver] was aware that taxis often cut buses off does not require a different result" (162 AD3d 476, 477 [1st Dept 2018]).

Plaintiff has introduced no evidence that Hill created the emergency, or that Hill could have avoided it by taking some other action. The existence of the emergency and the reasonableness of Hill's response provides a potentially nonnegligent explanation for the collision, and raises material issues of fact, as it cannot be said that Hill's actions were unreasonable as a matter of law (*see Maisonet*, 139 AD3d 121).

CONCLUSION

Upon the foregoing documents, it is hereby **ORDERED** that defendants' motion (Seq. No. 001) for summary judgment is **DENIED**; and it is further

ORDRED that the parties are directed to appear in IAS Part 21, 80 Centre Street Room 280, New York, New York on **July 11, 2024 at 10:30 a.m.** for a preliminary conference.

This constitutes the decision and order of the court.

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6/24/2024
DATE

RICHARD TSAI, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE