SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO **PART** 05M

Justice

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JAVIER ALEXANDER TAX AGUILAR, DALIA EUGENIA VELASQUEZ BARRENO, FERNANDO GARCIA LUX, ERVIN GARCIA GUTIERREZ, JUANA VELASQUEZ BARRENO, EVELYN GARCIA VELASQUEZ

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY FIRE DEPARTMENT, RICKY BRYAN DELGADO,

Defendant.

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INDEX NO. 452318/2025

MOTION DATE 09/05/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, plaintiffs Javier Alexander Tax Aguilar, Dalia Eugenia Velasquez Barreno, Fernando Garcia Lux, Ervin Garcia Gutierrez, Juana Velasquez Barreno, and Evelyn Garcia Velasquez ("Plaintiffs") move, pursuant to CPLR § 3212, for summary judgment on the issue of liability, Plaintiffs' lack of culpable conduct, and to dismiss the affirmative defenses interposed by defendants the City of New York ("City"), the New York City Fire Department ("FDNY"), and Ricky Bryan Delgado ("Delgado") (collectively, "Defendants"). Defendants oppose the motion and cross-move for summary judgment in their favor and for dismissal of the complaint. For the reasons set forth herein, Plaintiffs' motion is granted in part as to liability and denied as to the remainder, and Defendants' motion is denied.

BACKGROUND

In this personal injury action, Plaintiffs seek damages for injuries allegedly sustained on June 1, 2024, when an ambulance owned by the FDNY and operated by Delgado Delgado struck the rear of a van driven by plaintiff Javier Alexander Tax Aguilar ("Aguilar"). Following the incident, Plaintiffs timely served a notice of claim upon the City and the FDNY, and a hearing pursuant to General Municipal Law § 50-h was conducted on October 29, 2024 (NYSCEF Doc No. 1, complaint ¶¶ 5, 8).

On June 18, 2025, Plaintiffs commenced this action by filing a summons and complaint in Supreme Court, Queens County (NYSCEF Doc No. 1). The City filed an answer on behalf of itself and the FDNY on July 22, 2025 (NYSCEF Doc No. 5). Plaintiffs thereafter moved for summary judgment against the City and the FDNY on August 15, 2025 (NYSCEF Doc No. 6, notice of

motion). On that same date, the parties entered into a stipulation, so-ordered by the court, transferring venue to New York County, and the action was accordingly transferred to this court. In conjunction with the transfer, the pending motion for summary judgment was marked off the calendar as disposed.

On August 22, 2025, the City filed an amended answer on behalf of all Defendants (NYSCEF Doc Nos. 5, 18). Plaintiffs now move for summary judgment against all Defendants on the issue of liability, Plaintiffs' lack of culpable conduct, and to dismiss Defendants' affirmative defenses (NYSCEF Doc No. 19, notice of motion). In support of the motion, Plaintiffs contend that they are entitled to summary judgment on liability and culpable conduct because a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence against the operator of the rear vehicle, and Defendants have failed to offer a non-negligent explanation for the collision. Plaintiffs further assert that Delgado violated Vehicle and Traffic Law ("VTL") § 1129 by following too closely, and that VTL § 1104, commonly referred to as the emergency operation statute, is inapplicable because the ambulance was not engaged in any conduct enumerated therein that would exempt Defendants from the ordinary negligence standard.

Defendants oppose the motion and cross-move for summary judgment in their favor and for dismissal of the complaint. Defendants argue that they are entitled to summary judgment because the ambulance was engaged in an emergency operation and was utilizing its lights and siren at the time of the collision; accordingly, they contend that VTL § 1104 applies and that a reckless disregard standard governs. In support, Defendants submit an affirmation from Delgado, who avers that the accident occurred when Aguilar stopped suddenly, causing the ambulance to strike the rear of the van. Defendants maintain that Delgado's conduct was not reckless and that summary judgment on liability is therefore warranted. Defendants further argue that, even if the court determines that the ordinary negligence standard applies, triable issues of fact regarding comparative negligence preclude summary judgment, noting that the police accident report indicates that the van driven by Aguilar contained more passengers than available seating, with multiple passengers seated on the laps of others.

In reply and in opposition to the cross-motion, Plaintiffs argue that VTL § 1104 does not apply because the ambulance was not operating with its lights and siren activated at the time of the collision. Plaintiffs further rely on *Kabir v County of Monroe* (16 NY3d 217, 230 [2011]) for the proposition that the reckless disregard standard set forth in VTL § 1104 (e) applies only to conduct privileged under VTL § 1104 (b), none of which is implicated here. Plaintiffs also contend that an assertion that a vehicle came to a sudden and unanticipated stop is insufficient, standing alone, to raise a triable issue of fact.

Finally, in reply to Plaintiffs' opposition to the cross-motion, Defendants argue that issues of fact regarding comparative negligence nonetheless exist, pointing to Aguilar's affirmation, in which he states that the vehicle in front of him stopped abruptly, causing him to stop suddenly.

DISCUSSION

The legal standard for summary judgment is well-settled. Pursuant to CPLR § 3212(b), a court shall grant summary judgment if the moving party demonstrates, through admissible

evidence, that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). The movant must make a *prima facie* showing of entitlement to judgment by establishing the absence of any triable issue as to any material fact. Once this showing is made, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of a genuine issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]). Speculative or conclusory assertions are insufficient to defeat summary judgment.

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, *prima facie*, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries (*Fernandez v Ortiz*, 183 AD3d 443, 443-444 [1st Dept 2020]). Under the ordinary negligence standard, a party's violation of the VTL constitutes negligence *per se* [*Davis v Turner*, 132 AD3d 603, 603 [1st Dept 2015]).

Where the driver of an "authorized emergency vehicle" is "involved in an emergency operation," the driver may disregard certain traffic laws, provided that the conditions set forth in the statute are satisfied (VTL § 1104 [a]; *Anderson v Commack Fire Dist.*, 39 NY3d 495, 501 [2023]). These "privileges" include the following:

1. Stop, stand or park irrespective of the provisions of this title [VII];
2. Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing directions of movement or turning in specified directions"

(VTL § 1104 [b]).

Where the driver of an authorized emergency vehicle causes injury by virtue of one of these actions while involved in an emergency operation with the lights and sirens on, a "reckless disregard" standard applies (*Anderson*, 39 NY3d at 501-502). For the reckless disregard standard, "there must be evidence that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome" (*Anderson*, 39 NY3d at 502). Where the driver of an authorized emergency vehicle is not engaged in an emergency operation, or engages in unprivileged conduct, the ordinary negligence standard of care applies (*id.*). "Thus, for example, when drivers are not involved in emergency operations, they must operate their vehicles pursuant to the normal rules of the road and with the same reasonable care as other drivers" (*id.*).

In this case, the ordinary negligence standard applies because Delgado was not engaged in privileged conduct at the time of the collision (*Kabir*, 16 NY3d at 222; *Fajardo v City of New York*, 95 AD3d 820, 820 [2d Dept 2012] ["Vehicle and Traffic Law § 1104 [b] does not exempt

the driver of an authorized emergency vehicle engaged in an emergency operation from the rule that prohibits a driver of a vehicle from following too closely behind another vehicle").[1]

Plaintiffs have met their *prima facie* burden regarding liability by demonstrating that the accident was caused when the ambulance struck the van from behind (*see Mullen v Rigor*, 8 AD3d 104, 169 [1st Dept 2004] ["The driver of a stopped vehicle which is struck from behind by another vehicle is entitled to summary judgment unless the driver of the following vehicle presents a non-negligent explanation for the accident"]). The burden then shifts to Defendants to offer a nonnegligent explanation for the accident (*Santos v Booth*, 126 AD3d 506, 506 [1st Dept 2015]). Delgado's assertion that Aguliar stopped short creates a material question of fact with respect to contributory negligence, but is insufficient to rebut the presumption of negligence (*id.*; *Chowdhury v Matos*, 118 AD3d 488, 488 [1st Dept 2014] ["even crediting the testimony of defendant (plaintiff) abruptly stopped in the middle of the intersection and not for a red light, defendants have failed to proffer a nonnegligent explanation for the rear-end collision"]). Therefore, Plaintiffs' motion is granted as to liability, and Defendants' cross-motion is denied. Accordingly, it is

ORDERED that Plaintiffs' motion for summary judgment is granted in part, and summary judgment is granted in Plaintiffs' favor on the issue of liability and denied as to the remainder; and it is further

ORDERED that Defendants' cross-motion for summary judgment is denied; and it is further

ORDERED that Plaintiffs shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office; 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 the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff on the issue of liability; and it is further

ORDERED that the clerk of the Differentiated Case Management part is directed to schedule this matter for a preliminary conference on the first available date, according to the rules of that part.

This constitutes the order and decision of the court.

1/2/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

[1] To the extent that a question of fact exists regarding whether the ambulance was operating its lights and sirens at the time of the collision, it is not a material issue of fact because the emergency doctrine does not otherwise apply.