SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
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ALEXA GORDON,

Plaintiff,

-against-

ADELSO CALDERON and CINELOUISE CRISP,

Defendant.
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DECISION & ORDER

Index No.: 035586/2018

(Motion # 2)

Sherri L. Eisenpress, A.J.S.C.

The following papers, numbered 1 through 5, were considered in connection with Defendant Cinelouise Crisp's Notice of Motion for an Order, pursuant to *Civil Practice Law and Rules* § 3212, granting summary judgment and dismissal of the Complaint and all cross-claims, and for such other and further relief as this Court deems just and proper:

PAPERS	**NUMBERED**
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF CINELOUISE CRISP/EXHIBITS A-I	1-3
AFFIRMATION IN OPPOSITION BY ADELSO CALDERON/EXHIBIT A	4
AFFIRMATION IN OPPOSITION BY PLAINTIFF	5

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

This action was commenced by Plaintiff on September 17, 2018, with the filing of the Summons and Complaint through the NYSCEF system. Issue was joined with the filing of Defendant' Aldelso Calderon's Answer on October 22, 2018, through the NYSCEF system. Defendant Cinelouise Crisp filed an Answer through the NYSCEF system on December 18, 2018. Discovery proceeded and a Note of Issue was filed on October 25, 2019, and as such, the instant summary judgment motion is timely brought.

This action arises from an accident which occurred on September 19, 2015, on Route 9W, near its intersection with Fairmount Avenue, in the Town of Haverstraw, County of

Rockland. Defendant Calderon was operating his vehicle traveling north on Route 9W. Defendant Crisp was operating her vehicle traveling south on Route 9W and the Plaintiff, Alexa Gordon, was traveling south on Route 9W, behind the Crisp vehicle. Defendant Calderon struck a pothole, causing him to lose control and cross the double yellow line into the northbound lane, causing a head on collision with Crisp vehicle. At approximately the same time, Plaintiff's vehicle made contact with the rear of Crisp vehicle. Defendant Crisp testified that she first saw the Calderon vehicle when it was already over the double yellow lines.

Defendant Crisp moves for summary judgment and notes that Defendant Calderon was negligent as a matter of law in that he violated Vehicle and Traffic Lw Section 1126(a) by virtue of his crossing over the double yellow lines. She further contends that the law is clear that a driver is not required to anticipate that an automobile traveling in the opposite direction will cross over into on-coming traffic. Moreover, she contends that she was presented with an emergency situation not of her own making and is therefore entitled to summary judgment. In opposition to the motion, Defendant Calderon contends that there are triable issues of fact as to whether Defendant Crisp was negligent in failing to maintain a proper look out since she never observed Calderon prior to the impact and never attempted evasive maneuvers. Additionally, Defendant Calderon argues that there are issues of fact as to whether only the driver's side front corner of his vehicle crossed over the double yellow lines or whether the collision was a "full frontal head-on collision." Plaintiff submits a short affirmation adopting the arguments of Defendant Calderon in opposition to the motion.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., *et al*., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been

made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

"It has repeatedly been held that a driver who crosses over a double yellow line into opposing traffic, unless justified by an emergency not of the driver's own making, violates the Vehicle and Traffic Law and is guilty of negligence as a matter of law." Sena v. Negron, 38 A.D.3d 516, 518, 832 N.Y.S.2d 236 (2d Dept. 2007). See also Marsicano v. Dealer Storage Corp., 8 A.D.3d 451, 779 N.Y.S.2d 102 (2d Dept. 2004)(plaintiff established his entitlement to judgment as a matter of law by submitting evidence showing that a defendant violated Vehicle and Traffic Law Sec. 1126(a) by crossing over a double yellow line, and thereby causing the collision); Williams v. New York City Transit Authority, 37 A.D.3d 827, 832 N.Y.S.2d 54 (2 Dept. 2007)(evidence established the defendant's *prima facie* liability where bus moved to the right, in violation of VTL Sec. 1128(a), in order to avoid construction barriers on the roadway); Gadon v. Oliva, 294 A.D.2d 397; 742 N.Y.S.2d 122 (2d Dept. 2002). Although Defendants Crisp and Calderon disagree on how much of the Calderon vehicle was over the yellow lines, there is no dispute that at least some part of the vehicle crossed over. Thus, Defendant Calderon is negligent as a matter of law.

In opposition, Defendant Calderon and Plaintiff have failed to raise a triable issue of fact sufficient to deny summary judgment. It is axiomatic that a driver is not required to anticipate that a vehicle traveling in the opposite direction will cross over into oncoming traffic. Koch v. Levenson, 225 A.D.2d 592, 638 N.Y.S.2d 785 (2d Dept. 1996). Moreover, speculation that the driver in the opposing lane of traffic could have done something to avoid a vehicle crossing over a double yellow line is insufficient to defeat a motion for summary judgment.

Eichenwald v. Chaudhry, 17 A.D.3d 403, 404, 794 N.Y.S.2d 391 (2d Dept. 2005); Scott v. Kass, 48 A.D.3d 785, 786, 851 N.Y.S.2d 649 (2d Dept. 2008).

Accordingly, it is hereby

ORDERED that Defendant Cinelouise Crisp's Motion for Summary Judgment and dismissal of the Complaint against her and all cross-claims is GRANTED in its entirety; and it is further

ORDERED that counsel for the remaining parties shall appear in the TRIAL READINESS PART on **WEDNESDAY, JUNE 24, 2020, at 9:30 a.m.**

The foregoing constitutes the Decision and Order of this Court on Motion # 2.

Dated: New City, New York
April 10, 2020

/S/ Hon. Sherri L. Eisenpress, A.J.S.C.
HON. SHERRI L. EISENPRESS
Acting Justice of the Supreme Court

To: All parties via NYSCEF