STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

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**SUSAN L. PETERSON,**

Plaintiff,

-against-

**JONAH S. GARNSEY,**

Defendant.

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**DECISION & ORDER**

Index No.: 20192982

Appearances:

Steven B. Levitsky, Esq.
Handelman, Witkowicz & Levitsky, LLP
16 East Main Street, Suite 410
Rochester, New York 14614
*Attorneys for Plaintiff*

Michael C. Pretsch, Esq.
Osborn, Reed & Burke, LLP
120 Allens Creek Road, Suite 150
Rochester, New York 14618
*Attorneys for Defendant*

KUPFERMAN, J.,

The plaintiff commenced this action seeking to recover for property damage allegedly sustained to her vehicle as a result of a motor vehicle accident. The accident took place at or nearby the intersection of Fortsville Road and Fawn Road, in the Town of Moreau, New York. At the time of the accident, the plaintiff was a passenger in her vehicle. Her husband was driving it. They were heading southbound on Fortsville Road. The defendant was traveling northbound on Fortsville Road, allegedly attempting to make a left turn onto Fawn Road.

The plaintiff testified that the defendant "veered over the double solid lines and came at us." She estimated that both vehicles were traveling around 40 miles per hour. At the time of the

impact, the plaintiff did not notice any other vehicles on Fawn Road. The police accident report also does not mention any other vehicles. The plaintiff further testified that Fawn Road was one-way and that the defendant, if he was turning onto Fawn Road from Fortsville Road, would have been driving the wrong way.

The defendant testified at his deposition that when he attempted to turn left onto Fawn Road, another vehicle was "blocking" the roadway and/or "coming at" him, preventing him from entering Fawn Road. The other vehicle "was blocking like the whole road," and he could not drive onto Fawn Road "without hitting the [other] car or the sign." The defendant "swerved" back towards Fortsville Road to try to avoid a collision. Half of his vehicle was in the ditch, and the other half was on the road. After swerving back and forth, the defendant ultimately collided with the plaintiff's vehicle.

The defendant testified that he did not "really see" "the guy coming at [him] ... when [he] made the turn." That "guy," however, had "more than enough time to react." When asked to clarify what car was coming at him, the defendant responded, "Peterson's vehicle." The defendant further testified that if the other vehicle on Fawn Road had not obstructed his destination, he would have been able to complete his turn "with plenty of time." This other vehicle did not stop at the accident scene. He did not know who was driving that vehicle. It was not the plaintiff's vehicle. He also did not remember the type of vehicle. He thinks it was a maroon car, but he did not know.

The defendant believes the accident occurred around 3:00 or 4:00 p.m. It was a nice day. There was no snow on the road. The defendant testified that Fawn Road, at the subject intersection, was not marked as a one-way street, and that he was unaware before the accident that Fawn Road was a one-way street.

The police accident report lists the defendant's alleged unsafe speed and unsafe lane changing as apparent contributing factors for the accident. The plaintiff asserts that the defendant pleaded guilty to violating Vehicle and Traffic Law § 1141. She has submitted a certificate of disposition for the conviction. The defendant, in contrast, testified that he did not recall if he received any traffic tickets as a result of the accident. In an affidavit, the defendant also avers that he did not have sufficient funds to afford an attorney for any traffic citations.

**Analysis**

The plaintiff seeks partial summary judgment against the defendant on the issue of liability. She asserts that the defendant made a left hand turn without yielding the right-of-way, in violation of Vehicle and Traffic Law § 1141, and that such failure constitutes negligence as a matter of law (citing Briggs v Russo, 98 AD3d 547 [2d Dept 2012]; Covington v Kumar, 67 AD3d 463 [1st Dept 2009]). The defendant opposes the plaintiff's motion and has cross-moved for summary judgment in his favor based on the emergency doctrine. He contends that the emergency doctrine should be invoked because he was met with an unforeseen obstruction in his intended lane of traffic (namely, another vehicle blocking Fawn Road), which required him to take sudden evasive actions.

Procedural Issues

Prior to reaching the merits, there are several procedural issues raised by the defendant. The defendant asserts that the plaintiff's response to his cross motion (served one day prior to the return date) was untimely, and that the response (a letter referencing PJI Civil 2:26) was in the wrong format and contained insufficient allegations to defeat the cross motion.

Based on the plaintiff's demand for answering papers at least seven days prior to the return date, CPLR 2214 allowed the plaintiff (if she desired) to submit a reply to her motion, at least one day prior to the return date (see CPLR 2214 [b]). While CPLR 2215 does not specify the date

upon which the moving party's response is due to a cross motion, the applicable statutes (CPLR 2214 and 2215) have been reasonably interpreted as allowing responsive papers to be served with or as part of the reply on the motion, at least one day prior to the return date (see 1 Weinstein, Korn & Miller CPLR Manual § 15.04 [Bender 2023] ["Although not free from ambiguity, the 2007 amendment (to both CPLR 2214(b) and 2215) appears to provide that where a 16 day motion is served with the requested demand and the cross-motion is served at least seven days before the return date, the response to the cross-motion is due at the same time as the reply on the original motion, that is, one day before the return date."]). Accordingly, the plaintiff's response was timely.[1]

The form of the plaintiff's response was also not fatal. It did not allege any new facts and simply referenced the PJI. The response therefore did not need to be affirmed or notarized, as the defendant contends. Moreover, to the extent the defendant asserts that the plaintiff improperly submitted the response in the form of a letter rather than a memorandum of law, this assertion places form over substance and any such defect may be excused in the interests of justice, especially in this case where there has been no showing of any prejudice to the opposing party (see CPLR 2001).

The defendant also asserts that the plaintiff's responsive papers are insufficient because the plaintiff did not expressly address the emergency doctrine. It is unclear why the plaintiff's counsel would not at least address this issue in some manner. Nonetheless, the plaintiff has filed a motion for summary judgment, provided the parties' deposition testimony, cited to relevant portions of

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[1] It is irrelevant that the defendant demanded responsive papers to his cross motion at least seven days before the return date. The applicable statutes do not expressly authorize such a demand to be made on a movant by a cross movant and, in any event, CPLR 2215 does not expressly authorize or require the movant to serve responsive papers to a cross motion (see CPLR 2214; 2215).

the testimony, cited case law in support of her position, and alleged that the defendant was negligent as a matter of law. The Court therefore finds that the moving papers are sufficient to oppose the cross motion, and that the facts regarding the emergency doctrine are properly before the Court for summary resolution (see also CPLR 3212[b] [authorizing the Court to search the record on a motion for summary judgment and grant judgment in favor of the non-moving party]).

Merits

"Summary judgment is a drastic remedy and should not be granted unless there are no triable issues" (Michaelis v State of New York, 135 AD2d 1005, 1006 [3d Dept 1987]). The movant bears the initial burden of demonstrating "entitlement to judgment as a matter of law by proffering evidentiary proof in admissible form" (DiBartolomeo v St. Peter's Hosp. of the City of Albany, 73 AD3d 1326, 1326 [3d Dept 2010]; see CPLR 3212 [b]). If the moving party meets this initial burden, the burden then shifts to the party opposing the motion to raise a triable issue of fact (see DiBartolomeo, 73 AD3d at 1326). "The evidence must be viewed in the light most favorable to the nonmovant, and that party must be given the benefit of every favorable inference" (Parris-Kofi v Redneck, Inc., 204 AD3d 1180, 1181 [3d Dept 2022]).

"Drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (Guerin v Robbins, 182 AD3d 951, 951 [3d Dept 2020] [internal quotation marks and citations omitted]). When making a left turn, a driver must "yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard" (Vehicle & Traffic Law § 1141).[2] A

[2] The plaintiff's bill of particulars alleges that the defendant violated this section, among others.

violation of this traffic law, absent a valid excuse, constitutes negligence (see Delgado v Martinez Family Auto., 113 AD3d 426, 427 [1st Dept 2014]).[3]

Further, the emergency doctrine may present a defense or excuse to a driver who crosses into another driver's lane of traffic or otherwise violates the traffic law; however, this doctrine only applies where a driver is "confronted by a sudden and unforeseen occurrence not of his own making" (Tyson v Brecher, 212 AD2d 851, 851 [3d Dept 1995]; see Cancellaro v Shults, 68 AD3d 1234, 1236 [3d Dept 2009]; Sweeney v McCormick, 159 AD2d 832, 833 [3d Dept 1990]).

Here, the plaintiff testified that the defendant unexpectantly crossed into her lane of traffic and collided with her vehicle. Her vehicle had the right of way. She was a passenger at the time, and there has been no evidence submitted to suggest that her actions contributed to the accident. Moreover, although the defendant could not recall at his deposition if he received a traffic ticket as a result of the accident, the plaintiff has alleged that the defendant pleaded guilty to violating Vehicle and Traffic Law § 1141; she has also submitted the certificate of disposition indicating that the defendant was convicted of this violation (see London v North, 152 AD3d 884, 884-885 [3d Dept 2017]; Nasadoski v Shaut, 115 AD3d 1026, 1027 [3d Dept 2014]). This evidence was more than sufficient for the plaintiff to meet her initial burden.

In opposition, the defendant has failed to create an issue of fact. Even accepting the defendant's testimony as true, the facts presented do not show that a qualifying "emergency" existed. Rather, they show that the defendant merely faced a routine traffic situation that he should reasonably have anticipated and been prepared to meet (see Tyson, 212 AD2d at 851; compare

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[3] While a determination regarding a traffic ticket should not be given collateral estoppel effect in a subsequent negligence action, "a guilty plea to a traffic violation may constitute some evidence of negligence ... and the disposition of a traffic ticket may be admissible ... for limited purposes" (Marotta v Hoy, 55 AD3d 1194, 1197 [3d Dept 2008]).

Dearden v Tompkins County, 6 AD3d 783, 784-785 [3d Dept 2004] [recognizing that a driver faces an emergency when a car going in the opposite direction crosses into the driver's lane]).

Aside from attempting to turn the wrong way down a one-way street, the defendant acted negligently as a matter of law by failing to look out for other vehicles and driving at an unsafe speed. The defendant admitted that he did not "really see" "the guy coming at [him] when [he] made the turn." He also admitted that the "guy coming at [him]" had more than enough time to react. He therefore admittedly failed to pay attention to the other vehicles on the roadway and "see that which he should have seen" (Vasquez v County of Nassau, 91 AD3d 855, 857 [2d Dept 2012] [internal quotation marks and citation omitted]; see also Briggs v Russo, 98 AD3d 547, 547-548 [2d Dept 2012]). The defendant further failed to anticipate the situation by neglecting to exercise reasonable care to look out for other vehicles as he was making his left turn onto Fawn Road (see Vasquez, 91 AD3d at 857). The defendant also had to "swerve" when making a left turn to avoid the accident with the other vehicle. This indicates that the defendant neglected to drive at a safe rate of speed to maintain control of his vehicle, and that he similarly failed to use reasonable care to avoid a collision (see Tyson v Brecher, 212 AD2d at 851).

Accordingly, there was no qualifying emergency.

It is therefore,

**ORDERED**, that Plaintiff's motion seeking partial summary judgment on liability and an inquest is **GRANTED** and that Defendant's cross motion is **DENIED**; and it is further

**ORDERED**, that the parties and their counsel are directed to appear for a conference on April 4, 2023, at 10:30 a.m. No later than March 28, 2023, at 5:00 p.m., the parties' attorneys are directed to provide the Court with a statement of the issues for the inquest, an exhibit list, and a witness list; and it is further

**ORDERED,** that on or before March 24, 2023, the plaintiff is directed to file a note of issue.

This shall constitute the Decision & Order of the Court. The Court is hereby uploading the original Decision & Order into the NYSCEF system for filing and entry by the County Clerk. Counsel is still responsible for serving notice of entry of this Decision & Order in accordance with the Local Protocols for Electronic Filing for Saratoga County.

Dated: February 22, 2023
at Ballston Spa, New York

HON. RICHARD A. KUPFERMAN
Justice Supreme Court

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