

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D17578
W/kmg

_____AD3d_____

Argued - December 11, 2007

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2007-00413

DECISION & ORDER

Mahalia Cator, appellant,
v Jose Filipe, respondent.

(Index No. 27815/05)

Kagan and Gertel, Brooklyn, N.Y. (Irving Gertel of counsel), for appellant.

Robert P. Tusa (Shapiro, Beilly, Rosenberg & Aronowitz, LLP, New York, N.Y.
[Roy Karlin] of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Weiss, J.), entered November 20, 2006, which denied her motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff pedestrian was crossing the street within a crosswalk with the traffic light in her favor, when she was struck by the defendant's vehicle as it was making a left turn. While the defendant failed to yield the right of way to the plaintiff in apparent violation of Vehicle and Traffic Law § 1112(a), the plaintiff testified at her deposition that she had not looked to her left or right while crossing the street. Under the circumstances, the plaintiff failed to meet her burden of demonstrating her prima facie entitlement to judgment as a matter of law on the issue of liability (*see Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067), since a triable issue of fact exists as to her comparative negligence (*see Thoma v Ronai*, 82 NY2d 736; *Albert v Klein*, 15 AD3d 509; *Schmidt v Flickinger Co.*, 88 AD2d 1068).

Our holding in *Hoey v City of New York* (28 AD3d 717) is distinguishable since, in that case, the plaintiff demonstrated that he had been observing vehicles making turns at the time of the accident.

RITTER, J.P., MILLER, DILLON and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, prominent initial "J".

James Edward Pelzer
Clerk of the Court