

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

D26517
O/ct

_____AD3d_____

Submitted - February 11, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-08434

DECISION & ORDER

Yi Min Feng, etc., appellant, v
Jin Won Oh, respondent.

(Index No. 21275/08)

Michael A. Cervini, Jackson Heights, N.Y., for appellant.

Richard T. Lau & Associates, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much an order of the Supreme Court, Kings County (Martin, J.), dated June 16, 2009, as, upon granting her motion for summary judgment on the issue of liability to the extent of determining that the defendant was negligent as a matter of law, referred the issue of comparative negligence for trial.

ORDERED that on the Court's own motion, the plaintiff's notice of appeal is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed insofar as appealed from, with costs.

This action arose from an automobile accident at the intersection of 65th Street and 14th Avenue in Kings County. At the time of the accident, the plaintiff, a pedestrian, was crossing 65th Street, from the southeast corner toward the northeast corner. The plaintiff had a "walk" sign in her favor, was within the crosswalk, and was about one-third of the way across the street when she

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was struck on her left side by the defendant's vehicle as it was making a legal left turn onto 65th Street from 14th Avenue. The defendant had a green light in his favor at that time.

The evidence submitted by the plaintiff established, as a matter of law, that the defendant driver violated Vehicle and Traffic Law § 1112(a). However, the Supreme Court properly concluded that there was a triable issue of fact as to whether the plaintiff was comparatively negligent in light of the evidence that she did not look to her left as she crossed the street. Thus, under the circumstances of this case, the Supreme Court properly referred the issue of comparative negligence for trial (*see Lopez v Garcia*, 67 AD3d 558; *Gideon v Flatlands Beverage Distribs, Inc.*, 59 AD3d 596; *Cator v Felipe*, 47 AD3d 664; *Albert v Klein*, 15 AD3d 509; *Thoma v Ronai*, 189 AD2d 635, *affd* 82 NY2d 736; *Schmidt v Flickinger Co.*, 88 AD2d 1068).

FISHER, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court