

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

D31734
H/prt

_____AD3d_____

Argued - May 26, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2011-01254

DECISION & ORDER

Manny Colon, respondent, v
Zayda Gonzalez, appellant.

(Index No. 23391/08)

The McDonough Law Firm, LLP, New Rochelle, N.Y. (Diana K. Kanca and Edward G. Warren of counsel), for appellant.

Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C., Mineola, N.Y. (Liba N. Groveman and Martin Block of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated December 20, 2010, as denied her motion for summary judgment dismissing the complaint.

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

The Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint. The defendant failed to sustain her initial burden of demonstrating the absence of a triable issue of fact with respect to whether she exercised due care to avoid the subject accident (*see Hernandez v We Transp., Inc.*, 67 AD3d 967, 968; *Ryan v Budget Rent a Car*, 37 AD3d 698, 699; *Vanni v Bartman*, 16 AD3d 671, 672; *Levy v Town Bus Corp.*, 293 AD2d 452, 452; *Charles v Ball*, 291 AD2d 367, 367-368).

June 14, 2011

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In light of the defendant's failure to meet her initial burden, we need not consider the sufficiency of the plaintiff's opposition papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

RIVERA, J.P., FLORIO, DICKERSON and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court