

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

D33182
H/kmb

_____AD3d_____

Submitted - November 10, 2011

WILLIAM F. MASTRO, A.P.J.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-06073

DECISION & ORDER

Maria E. Garcia, appellant, v Maria Agustin El-Zien,
respondent.

(Index No. 12635/10)

Smiley & Smiley, LLP (John V. Decolator, Garden City, N.Y., of counsel), for
appellant.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock 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 (Siegal, J.), dated May 11, 2011, which denied her
motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries after
she allegedly was struck by a vehicle operated by the defendant, which was turning right at an
intersection. The plaintiff moved for summary judgment on the issue of liability, submitting, among
other things, an affidavit which established that she was struck by the defendant's vehicle while she
was crossing in a crosswalk with the light in her favor.

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 plaintiff failed to
demonstrate that she was free from comparative fault, as her affidavit did not show that she looked
for approaching traffic before she began to cross the street (*see* CPLR 3212[b]; *Roman v AI*

December 6, 2011

Page 1.

GARCIA v EL-ZIEN

Limousine, Inc., 76 AD3d 552, 552; *Yuen Lum v Wallace*, 70 AD3d 1013, 1014; *see also Thoma v Ronai*, 82 NY2d 736, 737; *Rosenblatt v Venizelos*, 49 AD3d 519, 520). Since the plaintiff failed to submit evidence demonstrating that she was free from comparative fault, the Supreme Court properly denied the motion, regardless of the sufficiency of the opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

MASTRO, A.P.J., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court