

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

D34527
N/kmb

_____AD3d_____

Argued - February 27, 2012

PETER B. SKELOS, J.P.
RANDALL T. ENG
ARIEL E. BELEN
JEFFREY A. COHEN, JJ.

2011-05475

DECISION & ORDER

John J. Cuevas, respondent, v Sharon Chavez, appellant.

(Index No. 14447/10)

Rivkin Radler LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, and Merrill S. Biscone of counsel), for appellant.

Michael S. Lamonsoff, New York, N.Y. (Stacey Haskel of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Queens County (McDonald, J.), dated March 23, 2011, which granted the plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff established his prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating that the defendant driver, in violation of Vehicle and Traffic Law § 1112(a), failed to yield the right-of-way to him, as he was crossing the street within the crosswalk with the pedestrian "WALK" signal in his favor, and that he was free from comparative fault (*see Arazashvilli v Executive Fleet Mgt., Corp.*, 90 AD3d 682; *Qamar v Kanarek*, 82 AD3d 860; *Klee v Americas Best Bottling Co., Inc.*, 60 AD3d 911; *Sulaiman v Thomas*, 54 AD3d 751; *Voskin v Lemel*, 52 AD3d 503; *cf. Thoma v Ronai*, 82 NY2d 736; *Roman v Al Limousine, Inc.*, 76 AD3d 552). In opposition, the defendant failed to raise a triable issue of fact (*see Benedikt v Certified Lbr. Corp.*, 60 AD3d 798; *Sulaiman v Thomas*, 54 AD3d 751; *Rosenblatt v Venizelos*, 49 AD3d 519), and failed to demonstrate that further discovery was warranted (*see Arazashvilli v Executive Fleet Mgt., Corp.*, 90 AD3d 682; *Martinez v Kreychmar*, 84 AD3d 1037; *Benedikt v Certified Lbr. Corp.*, 60 AD3d 798; *Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760).

Accordingly, the Supreme Court properly granted the plaintiff's motion for summary

April 10, 2012

Page 1.

CUEVAS v CHAVEZ

judgment on the issue of liability.

SKELOS, J.P., ENG, BELEN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court