

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

D34563
Y/ct

_____AD3d_____

Argued - March 15, 2012

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
JEFFREY A. COHEN, JJ.

2011-08568

DECISION & ORDER

Nancy Gonzalez, etc., appellant, v Lorissa Bus
Service, Inc., et al., respondents.

(Index No. 2943/10)

Robinson & Yablon, P.C., New York, N.Y. (Thomas Torto and Jason Levine of
counsel), for appellant.

Silverman Sclar Shin & Byrne, PLLC, New York, N.Y. (Alan M. Sclar of counsel),
for respondents.

In an action to recover damages for wrongful death, the plaintiff appeals from an
order of the Supreme Court, Queens County (Agate, J.), dated June 30, 2011, which denied her
motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The plaintiff's decedent, Carmen Diaz, allegedly was crossing the street within a
crosswalk at an intersection with a traffic light in her favor when she was struck by a bus operated
by the defendant Hector Aguilar and owned by the defendant Lorissa Bus Service. Aguilar testified
at his deposition that he looked all around him before making a left turn and that he did not see Diaz.
He had completed making the left turn when he heard screams and saw Diaz near the left, rear area
of the bus.

In support of her motion for summary judgment on the issue of liability, the plaintiff
failed to establish, prima facie, that Aguilar's alleged negligence in the operation of his vehicle was
the sole proximate cause of the accident (*see generally Winegrad v New York Univ. Med. Ctr.*, 64

NY2d 851, 853). The plaintiff failed to establish, prima facie, that Diaz was already in the crosswalk when Aguilar began to make his turn and that Diaz was not comparatively at fault in the happening of the accident (*see* Rules of the City of NY Dept of Transportation [34 RCNY] § 4-04[b][2]; *Seong Yim Kim v New York City Tr. Auth.*, 87 AD3d 531; *Kaminsky v M.T.A. N.Y. City Tr. Auth.*, 79 AD3d 411, 412). Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the issue of liability.

RIVERA, J.P., FLORIO, CHAMBERS and COHEN, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court