

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

D34760  
C/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 16, 2012

RUTH C. BALKIN, J.P.  
JOHN M. LEVENTHAL  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

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2011-07215

DECISION & ORDER

Anne Marie Melchiorre, respondent, v Matthew N. Dreisch,  
appellant.

(Index No. 102936/09)

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Connors & Connors, P.C., Staten Island, N.Y. (Robert J. Pfuhler of counsel), for  
appellant.

Block O'Toole & Murphy, LLP, New York, N.Y. (Robyn Brazzil of counsel), for  
respondent.

In an action to recover damages for personal injuries, the defendant appeals from an  
order of the Supreme Court, Richmond County (Maltese, J.), dated June 7, 2011, which granted the  
plaintiff's motion for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's  
motion for summary judgment on the issue of liability is denied.

In support of her motion for summary judgment on the issue of liability, the plaintiff  
failed to establish, prima facie, that she used due care in crossing the street and, thus, that the  
defendant's alleged negligent operation of his vehicle was the sole proximate cause of the accident  
(see *Thoma v Ronai*, 82 NY2d 736, 737; *Cohn v Khan*, 89 AD3d 1052, 1053; *Roman v AI  
Limousine, Inc.*, 76 AD3d 552; *Yuen Lum v Wallace*, 70 AD3d 1013, 1014). The plaintiff's failure  
to meet her prima facie burden required denial of her motion without regard to the sufficiency of the  
defendant's opposition papers (see *Yuen Lum v Wallace*, 70 AD3d at 1014).

BALKIN, J.P., LEVENTHAL, ROMAN and SGROI, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

May 1, 2012

MELCHIORRE v DREISCH