

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

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Submitted - June 18, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2012-01218

DECISION & ORDER

Lamont Wilson, appellant, v Wei Cheng, et al.,
respondents.

(Index No. 14960/11)

Allen L. Rothenberg, New York, N.Y. (Marc J. Rothenberg of counsel), for appellant.

Mulholland, Minion, Duffy, Davey, McNiff & Beyrer, Williston Park, N.Y. (Robert A. Seeman of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Bayne, J.), dated December 16, 2011, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

On June 11, 2010, a vehicle owned and operated by the plaintiff and a vehicle operated by the defendant Wei Cheng, and owned by the defendant Peng Li, Cheng's husband, were involved in an accident at the intersection of Atlantic and Kingston Avenues in Brooklyn. The plaintiff had been traveling westbound on Atlantic Avenue when Cheng, traveling eastbound on Atlantic Avenue, attempted to turn left onto Kingston Avenue when the accident occurred.

The plaintiff commenced this action to recover damages for personal injuries allegedly sustained as a result of the accident. Approximately one month after joinder of issue, he moved for summary judgment on the issue of liability, alleging that Cheng had made an illegal left turn. At the time the plaintiff made his motion, he had not responded to the defendants' discovery demands, and no depositions had been taken. In support of his motion, the plaintiff submitted his own affidavit, in which he set forth a conclusory description of the accident, the affirmation of his

attorney, a copy of the pleadings, and an uncertified police accident report. The Supreme Court denied the motion, and the plaintiff appeals. We affirm.

On the papers submitted, the plaintiff failed to establish his prima facie entitlement to judgment as a matter of law on the issue of liability with evidence in admissible form (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Hernandez v Tepan*, 92 AD3d 721, 722). Since the plaintiff did not sustain his prima facie burden, we need not review the sufficiency of the defendants' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Winner v Star Cruiser Transp.*, 95 AD3d 1109).

The plaintiff's remaining contentions either are without merit or have been rendered academic by our determination.

DILLON, J.P., LEVENTHAL, AUSTIN and ROMAN, 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