

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 12-00260

PRESENT: SCUDDER, P.J., SMITH, CENTRA, CARNI, AND SCONIERS, JJ.

GILBERTO AGUDO MARTINEZ, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

APRIL M. REMBERT, DEFENDANT-RESPONDENT.

GILBERTO AGUDO MARTINEZ, PLAINTIFF-APPELLANT PRO SE.

HISCOCK & BARCLAY, LLP, ROCHESTER (MARK T. WHITFORD, JR., OF COUNSEL),
FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Monroe County Court (John Lewis DeMarco, J.), entered December 22, 2011. The order affirmed a judgment of the Rochester City Court.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff appeals from an order affirming City Court's judgment in favor of defendant in this small claims action. The record establishes that plaintiff and defendant gave different versions of the automobile accident, raising a credibility issue for the factfinder to resolve (*see generally Williams v Roper*, 269 AD2d 125, 126-127, *lv dismissed* 95 NY2d 898; *Moses v Randolph*, 236 AD2d 706, 707). We affirm the order, inasmuch as we agree with County Court that "substantial justice has . . . been done between the parties according to the rules and principles of substantive law" (UCCA 1807; *see Mead Home Improvement, Inc. v Goldstein*, 56 AD3d 1179, 1179). Contrary to plaintiff's further contention, there is no indication that City Court was biased against him (*see Makas v Every*, 224 AD2d 793, 794, *appeal dismissed* 88 NY2d 867).

Entered: April 26, 2013

Frances E. Cafarell
Clerk of the Court