

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

**294/12**

**CA 11-02068**

PRESENT: CENTRA, J.P., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

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MICHEL D. TYSON, PLAINTIFF-APPELLANT,

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MEMORANDUM AND ORDER

LAWRENCE NAZARIAN, DEFENDANT-RESPONDENT.

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PARISI & BELLAVIA, ROCHESTER (TIMOTHY C. BELLAVIA OF COUNSEL), FOR PLAINTIFF-APPELLANT.

BURGIO, KITA & CURVIN, BUFFALO (HILARY C. BANKER OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order and judgment (one paper) of the Supreme Court, Monroe County (Thomas A. Stander, J.), entered August 15, 2011 in a personal injury action. The order and judgment granted the motion of defendant for summary judgment, dismissed the complaint and denied the motion and cross motion of plaintiff for summary judgment. The order and judgment was affirmed by order of this Court entered June 8, 2012 (96 AD3d 1349), and the Court of Appeals on December 18, 2012 modified the order by denying the motion of defendant for summary judgment and remitted the case to this Court for further proceedings in accordance with the memorandum (\_\_\_ NY3d \_\_\_ [Dec. 18, 2012]).

Now, upon remittitur from the Court of Appeals,

It is hereby ORDERED that, upon remittitur from the Court of Appeals, the order and judgment so appealed from is unanimously modified on the law by granting that part of plaintiff's "motion and cross motion" for partial summary judgment on the issue of defendant's negligence and as modified the order and judgment is affirmed without costs.

Memorandum: On remittitur from the Court of Appeals, we are called upon to address plaintiff's contention that she is entitled to partial summary judgment on the issue of defendant's negligence. On this record, it is undisputed that defendant made a left-hand turn in his vehicle, in front of plaintiff's vehicle. The driver in the lane closest to defendant had stopped to give defendant the opportunity to turn, but defendant could not or did not see plaintiff's vehicle in the outer lane. When defendant executed the turn, he collided with plaintiff's vehicle, which was traveling straight through the intersection with the right-of-way. Plaintiff likewise did not see defendant's vehicle until it was too late to stop without a collision. Thus, the evidence establishes as a matter of law that defendant was

negligent and that his negligence was the sole proximate cause of the accident (see *Rogers v Edelman*, 79 AD3d 1803, 1804; *Guadagno v Norward*, 43 AD3d 1432, 1433). We therefore modify the order and judgment by granting that part of plaintiff's "motion and cross motion" for partial summary judgment on the issue of defendant's negligence.

Entered: February 8, 2013

Frances E. Cafarell  
Clerk of the Court