

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

D12573
E/mv

_____AD3d_____

Argued - September 25, 2006

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2005-00296
2005-06456

DECISION & ORDER

Delphine Lameni, appellant, v Verizon,
et al., respondents, et al., defendants.

(Index No. 3417/02)

Barry Siskin, New York, N.Y., for appellant.

Cullen and Dykman, LLP, Brooklyn, N.Y. (Camille D. Barnett and Kevin M. Walsh
of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals (1) from an order of the Supreme Court, Kings County (Ambrosio, J.), dated November 15, 2004, which granted the motion of the defendants Verizon New York, Inc., s/h/a Verizon, Bell Atlantic, New York Telephone Company, and NYNEX, and Leanthony Meeks for summary judgment dismissing the complaint insofar as asserted against them on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) and (2), as limited by her brief, from so much of an order of the same court dated May 9, 2005, as, in effect, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order dated November 15, 2004, is dismissed, as that order was superseded by the order dated May 9, 2005, made upon reargument; and it is further,

ORDERED that the order dated May 9, 2005, is reversed insofar as appealed from, on the law, upon reargument, the order dated November 15, 2004, is vacated, and the motion for summary judgment dismissing the complaint insofar as asserted against the respondents is denied; and it further,

November 14, 2006

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ORDERED that one bill of costs is awarded to the plaintiff.

The respondents failed to establish a prima facie case that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Connors v Flaherty*, 32 AD3d 891). Accordingly, the Supreme Court should have denied their motion for summary judgment dismissing the complaint insofar as asserted against them. In light of the foregoing, we need not consider the sufficiency of the papers submitted in opposition (*see Mariaca-Olmos v Mizrhy*, 226 AD2d 437, 438).

CRANE, J.P., KRAUSMAN, SPOLZINO and SKELOS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court