

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

D13663  
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Submitted - December 20, 2006

DAVID S. RITTER, J.P.  
GLORIA GOLDSTEIN  
ANITA R. FLORIO  
JOSEPH COVELLO, JJ.

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2006-00561

DECISION & ORDER

Carlos Gonzalez, respondent, v Seung E. Baik,  
et al., appellants.

(Index No. 47411/03)

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James P. Nunemaker, Jr., Uniondale, N.Y. (Joseph G. Gallo of counsel), for appellants.

Lazarowitz & Manganillo, LLP, Brooklyn, N.Y. (Michael S. Lazarowitz of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Dabiri, J.), dated November 16, 2005, as denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the determination of the Supreme Court, the defendants established prima facie that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident which occurred on May 2, 2003, on the ground, inter alia, that he currently exhibited no limitations of range of motion (*see Kearsse v New York City Tr. Auth.*, 16 AD3d 45). However, the plaintiff, in opposition, submitted the affirmation of his treating physician quantifying loss of range of motion based upon a recent examination performed by him and concluding that the plaintiff's "functional disabilities and limitations . . . are causally related to the

January 30, 2007

GONZALEZ v SEUNG E. BAIK

Page 1.

automobile accident which occurred on May 2, 2003." Accordingly, there are triable issues of fact which preclude the granting of summary judgment on the issue of serious injury (*see Cenatus v Rosen*, 3 AD3d 546).

RITTER, J.P., GOLDSTEIN, FLORIO and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court