

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

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Submitted - January 10, 2007

STEPHEN G. CRANE, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON
RUTH C. BALKIN, JJ.

2005-09839
2006-05376

DECISION & ORDER

Rudolph Ali, appellant, v Wilbur Brooks, respondent.

(Index No. 42738/03)

Harmon, Linder & Rogowsky, Mineola, N.Y. (Mitchell Dranow of counsel), for appellant.

James P. Nunemaker, Jr., Uniondale, N.Y. (Gene W. Wiggins of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from (1) an order of the Supreme Court, Kings County (Dabiri, J.), dated September 21, 2005, which granted the defendant's motion for summary judgment dismissing the complaint on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d), and (2) a judgment of the same court dated May 15, 2006, which, upon the order, is in favor of the defendant and against him, dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

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

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*).

The defendant made a prima facie showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955; *Aponte v Tusa*, 28 AD3d 407; *Kearse v New York City Tr. Auth.*, 16 AD3d 45, 49-50). The plaintiff failed to raise a triable issue of fact either by his submissions in opposition to the defendant's motion or by his submissions on a subsequent motion for leave to renew.

CRANE, J.P., SANTUCCI, FLORIO, DILLON and BALKIN, 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