

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

D14202
W/nl

_____AD3d_____

Submitted - February 7, 2007

ROBERT W. SCHMIDT, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2006-03883

DECISION & ORDER

Martino Sully, appellant, v Kings Luxury, Inc.,
et al., respondents.

(Index No. 24540/03)

Decolator, Cohen & DiPrisco, LLP, Garden City, N.Y. (Joseph L. Decolator of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Johnson, J.), dated March 30, 2006, which granted the defendants' 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).

ORDERED that the order is affirmed, with costs.

The defendants met their burden of establishing that the plaintiff did not sustain a serious injury as a result of the subject accident (*see* Insurance Law § 5102[d]; *Baez v Rahamatali*, 6 NY3d 868, 869; *Cervino v Gladysz-Steliga*, _____AD3d_____ [2d Dept, Jan. 23, 2007]). In opposition to the defendants' motion, the plaintiff submitted a physician's report which was unaffirmed and thus, insufficient to raise an issue of fact (*see Grasso v Angerami*, 79 NY2d 813, 814;

March 6, 2007

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Elder v Stokes, 35 AD3d 799; *Nkhereanye v Hillaire*, 35 AD3d 419). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

SCHMIDT, J.P., KRAUSMAN, GOLDSTEIN, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court