

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

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_____AD3d_____

Submitted - February 28, 2007

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

2006-07763

DECISION & ORDER

Sofya Kaplun, respondent, v Miguel Septama,
appellant.

(Index No. 27019/04)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Michael I. Josephs of counsel), for appellant.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Douglass, J.), dated May 3, 2006, which denied his 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, without costs or disbursements.

The defendant met his burden of establishing prima facie that the plaintiff did not sustain a serious injury from the subject accident (*see* Insurance Law § 5102[d]; *Baez v Rahamatali*, 6 NY3d 868, 869; *Cervino v Gladysz-Steliga*, 36 AD3d 744; *Wright v Peralta*, 26 AD3d 489). In opposition, the plaintiff raised a triable issue of fact by presenting medical evidence contemporaneous with the subject accident that she sustained a possible fracture from the subject accident (*see Bonner v Hill*, 302 AD2d 544). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint.

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

ENTER:



James Edward Pelzer
Clerk of the Court

March 27, 2007

KAPLUN v SEPTAMA