

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

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Submitted - February 28, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-03162

DECISION & ORDER

Peter A. Phillips, et al., appellants, v Stephan Hacking Corp., et al., respondents.

(Index No. 31328/02)

Michael Siegel, P.C., Jackson Heights, N.Y., for appellants.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondents.

In an action to recover damages for personal injuries and property damage, the plaintiffs appeal from an order of the Supreme Court, Queens County (Polizzi, J.), dated February 22, 2006, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff Peter Phillips did not sustain a serious injury within the meaning of Insurance Law § 5102 (d), and denied, as academic, their cross motion for summary judgment on the issue of liability.

ORDERED that the order is reversed, on the law, the defendants' motion for summary judgment dismissing the complaint is denied, and the matter is remitted to the Supreme Court for a determination of the plaintiffs' cross motion on the merits.

The defendants made a prima facie showing that the plaintiff Peter Phillips did not sustain a serious injury within the meaning of Insurance Law § 5102 (d) (*see Baez v Rahamatali*, 6 NY3d 868, 869; *Ranzie v Abdul-Massih*, 28 AD3d 447, 448; *Wright v Peralta*, 26 AD3d 489). The plaintiffs, however, raised a triable issue of fact as to whether the plaintiff Peter Phillips sustained a

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serious injury (*see Pommells v Perez*, 4 NY3d 566, 577). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

In addition, the Supreme Court should have determined the plaintiffs' cross motion on the issue of liability both as it relates to the serious injury claim and to the plaintiffs' claim for property damage. Therefore, we remit the matter to the Supreme Court for a determination of the plaintiffs' cross motion on the merits.

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, 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