

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

D14645
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Submitted - March 7, 2007

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

2006-05471

DECISION & ORDER

Edith M. Braun, appellant, v Thomas Melia, et al.,
respondents.

(Index No. 26112/04)

Kujawski & DelliCarpini, Deer Park, N.Y. (Mark C. Kujawski of counsel), for
appellant.

Huenke & Rodriguez, Melville, N.Y. (Glen P. Rodriguez of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Weber, J.), dated May 2, 2006, which granted the defendants' cross motion for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d), and, in effect, denied, as academic, her motion for summary judgment on the issue of liability.

ORDERED that the order is modified, on the law, (1) by deleting the provision thereof granting the defendant's cross 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), and substituting therefor a provision denying the cross motion; and (2) by deleting the provision thereof which, in effect, denied, as academic, the plaintiff's motion for summary judgment on the issue of liability; as so modified, the order is affirmed, with costs to the plaintiff, and the matter is remitted to the Supreme Court, Suffolk County, for a determination of the plaintiff's motion on the merits.

April 17, 2007

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The defendants established prima facie that the plaintiff did not sustain a serious injury from the subject accident (*see* Insurance Law § 5102[d]; *Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 353). However, in opposition, the plaintiff raised an issue of fact. Accordingly, the Supreme Court should have denied the defendants' cross 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