

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

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_____AD3d_____

Argued - March 20, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2006-02879

DECISION & ORDER

Maranatha Montas, appellant, v Joseph V. Tuelia,
Jr., et al., respondents.

(Index No. 9290/04)

Kim I. McHale & Associates, P.C., New York, N.Y. (Huy M. Le of counsel), for
appellant.

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, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Weiss, J.), entered February 10, 2006, as granted the defendants' 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 reversed insofar as appealed from, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

The defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff did not suffer a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 350-351). However, in opposition, the plaintiff raised a triable issue of fact as to whether she sustained a serious injury by submitting

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competent medical evidence in admissible form (*see Fisher v Williams*, 289 AD2d 288, 289). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

MILLER, J.P., RITTER, COVELLO 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