

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

D14908
G/gts

_____AD3d_____

Submitted - March 21, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
STEVEN W. FISHER
ROBERT A. LIFSON
THOMAS A. DICKERSON, JJ.

2006-08208

DECISION & ORDER

Anna Krayn, respondent, v
Jose Torella, et al., appellants.

(Index No. 5525/05)

Billig Law, P.C., New York, N.Y. (Darin S. Billig of counsel), for appellants.

Hill & Moin LLP, New York, N.Y. (Cheryl Moin of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Partnow, J.), dated June 20, 2006, which denied their 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, with costs.

To prevail on their motion for summary judgment dismissing the complaint, the defendants were required to make a prima facie showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyster*, 79 NY2d 955). Since the defendants failed to address the plaintiff's allegation that she sustained a psychological injury constituting a serious injury within the meaning of Insurance Law § 5102(d) as a result of the accident, they failed to satisfy this burden. As a result, it is

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unnecessary to reach the question of whether the plaintiff's papers in opposition were sufficient to raise a triable issue of fact (*see Coscia v 938 Trading Corp.*, 283 AD2d 538).

RIVERA, J.P., SPOLZINO, FISHER, LIFSON and DICKERSON, 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