

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

D15122  
G/gts

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - April 11, 2007

STEPHEN G. CRANE, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
MARK C. DILLON  
RUTH C. BALKIN, JJ.

---

2006-08748

DECISION & ORDER

Robert F. Codrington II, respondent,  
v Nazier Ahmad, et al., appellants.

(Index No. 16113/04)

---

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for appellants.

Goidel & Siegel, LLP, New York, N.Y. (Steven E. Cohen 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 (Bunyan, J.), dated July 26, 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 reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is granted.

The defendants met their prima facie burden of establishing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955). In opposition, the plaintiff failed to raise a triable issue of fact.

May 15, 2007

CODRINGTON v AHMAD

Page 1.

The plaintiff's examining physician improperly relied on unsworn and unaffirmed reports of other physicians (*see Elder v Stokes*, 35 AD3d 799; *Felix v New York City Tr. Auth.*, 32 AD3d 527, 528; *Friedman v U-Haul Truck Rental*, 216 AD2d 266, 267). Therefore, the physician's report was without probative value in opposing the defendants' motion. The plaintiff's affidavit was insufficient to show that he sustained a serious injury caused by the accident since there was no objective medical evidence to demonstrate that he sustained a serious injury (*see Yakubov v CG Trans Corp.*, 30 AD3d 509, 510; *Davis v New York City Tr. Auth.*, 294 AD2d 531, 531-532). The plaintiff's remaining submissions were without probative value in opposing the motion since they were unsworn, unaffirmed, or uncertified (*see Grasso v Angerami*, 79 NY2d 813, 814-815; *Felix v New York City Tr. Auth.*, *supra* at 528; *Yakubov v CG Trans Corp.*, *supra*; *Pagano v Kingsbury*, 182 AD2d 268, 270; *see also* CPLR 4518[c]).

CRANE, J.P., SANTUCCI, FLORIO, DILLON and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court