

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

D15550
Y/cb

_____AD3d_____

Submitted - May 16, 2007

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

2006-07480

DECISION & ORDER

Ronald Perrotta, et al., respondents, v
Margaret Bambury, et al., appellants.

(Index No. 12985/02)

Greenstein & Milbauer, P.C. (Arnold E. DiJoseph, P.C., New York, N.Y. [Norman I. Lida] of counsel), for respondents.

Hawkins Feretic & Daly, LLC, New York, N.Y. (James M. Merlino of counsel), for appellants.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Richmond County (Maltese, J.), dated March 6, 2006, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff Ronald Perrotta did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The papers submitted in support of the defendants' motion for summary judgment failed to make a prima facie showing that the plaintiff Ronald Perrotta did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject motor vehicle accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). Since the defendants failed to establish their prima facie entitlement to judgment as a matter of law in the first

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instance, it is unnecessary to reach the question of whether the plaintiffs' papers were sufficient to raise a triable issue of fact (*see Coscia v 938 Trading Corp.*, 283 AD2d 538).

SCHMIDT, J.P., KRAUSMAN, GOLDSTEIN, COVELLO and ANGIOLILLO, 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