

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

D16317
W/kmg

_____AD3d_____

Submitted - September 5, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2006-09490

DECISION & ORDER

Felipe S. Andrade, appellant, v Denise Hatzis,
respondent, et al., defendant.

(Index No. 04-22383)

Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker of counsel), for
appellant.

Lewis Johs Avallone Aviles, LLP, Riverhead, N.Y. (Rebecca K. Vainder and Michael
G. Kruzynski of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals
from an order of the Supreme Court, Suffolk County (Pines, J.), entered August 10, 2006, which
granted the motion of the defendant Denise Hatzis for summary judgment dismissing the complaint
insofar as asserted against her on the ground that he 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 of the
defendant Denise Hatzis for summary judgment dismissing the complaint insofar as asserted against
her is denied.

Contrary to the Supreme Court's determination, the defendant Denise Hatzis
(hereinafter Hatzis) failed, on her motion, to establish 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*

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Rent A Car Sys., 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). In his report, Hatzis's examining neurologist noted the existence of limitations in the range of motion of the plaintiff's cervical spine upon testing (see *Quinones v E & L Transp., Inc.*, 35 AD3d 577; *Smith v Delcore*, 29 AD3d 890; *Sano v Gorelik*, 24 AD3d 747; *Spuhler v Khan*, 14 AD3d 693; *Omar v Bello*, 13 AD3d 430).

Since Hatzis failed to make a prima facie showing of entitlement to judgment as a matter of law, it is unnecessary to consider whether the plaintiff's opposition papers were sufficient to raise a triable issue of fact (see *Coscia v 938 Trading Corp.*, 283 AD2d 538).

RIVERA, J.P., KRAUSMAN, FLORIO, CARNI and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court