

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

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Submitted - September 19, 2007

FRED T. SANTUCCI, J.P.
GLORIA GOLDSTEIN
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2006-08407

DECISION & ORDER

Rosemary Munoz, plaintiff, Sebastian Munoz,
an infant under the age of 18 years old by his mother
and natural guardian, Rosemary Munoz, et al.,
appellants, v Murtuza S. Haider, respondent.

(Index No. 8805/04)

Mallilo & Grossman, Flushing, N.Y. (Francesco Pomara, Jr., and Christopher L. Bauer of counsel), for appellants.

White Fleischner & Fino, LLP, New York, N.Y. (Nancy Lyness of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the plaintiffs Sebastian Munoz, an infant under the age of 18 years old by his mother and natural guardian, Rosemary Munoz, and Pedro Munoz, Jr., an infant under the age of 18 years old by his mother and natural guardian, Rosemary Munoz, appeal from an order of the Supreme Court, Queens County (Kelly, J.), entered July 19, 2006, which granted the defendant's motion for summary judgment dismissing the complaint insofar as asserted by them on the ground that neither of them sustained a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

October 9, 2007

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Contrary to the appellants' contention, the defendant met her burden on her motion for summary judgment by establishing, prima facie, that neither of the appellants sustained 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 Eyles*, 79 NY2d 955, 956-957). Since the appellants failed to submit any medical evidence in opposition to the defendant's motion and thus did not raise any triable issues of fact, the Supreme Court properly granted the defendant's motion.

SANTUCCI, J.P., GOLDSTEIN, DILLON 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