

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

D16497  
C/cb

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

Submitted - September 19, 2007

STEPHEN G. CRANE, J.P.  
DAVID S. RITTER  
STEVEN W. FISHER  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

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2006-07943

DECISION & ORDER

Fred McDonald, respondent, v Simon Stroh, appellant.

(Index No. 40013/04)

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Irwen C. Abrams (Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. [Joseph A.H. McGovern and John D. Morio] of counsel), for appellant.

Joseph N. Di Grazia, Brooklyn, N.Y. (Louis R. Lombardi of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Balter, J.), entered July 12, 2006, which denied his 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ORDERED that the appeal is dismissed, without costs or disbursements, as the order was superseded by an order of the same court entered December 12, 2006, made upon reargument (*see McDonald v Stroh*, \_\_\_\_\_AD3d\_\_\_\_\_ [Appellate Division Docket No. 2007-00526, decided herewith]).

CRANE, J.P., RITTER, FISHER, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

October 9, 2007

McDONALD v STROH