

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

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Submitted - October 3, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2007-02498

DECISION & ORDER

Elira Govori, respondent, v Agate Corp.,
et al., appellants, et al., defendants.

(Index No. 10204/05)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for appellants.

Steven Smith, Brooklyn, N.Y. (Louis A. Badolato of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Agate Corp. and Carboni Benjamin appeal, as limited by their brief, from so much an order of the Supreme Court, Kings County (Saitta, J.), dated February 8, 2007, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 insofar as appealed from, on the law, with costs, the motion of the defendants Agate Corp. and Carboni Benjamin for summary judgment dismissing the complaint insofar as asserted against them is granted.

The defendants Agate Corp. and Carboni Benjamin established their prima facie entitlement to judgment as a matter of law by demonstrating, through the affirmations of their medical experts and the deposition testimony of the plaintiff, 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 Eycler*, 79 NY2d 955; *see also Meyers v Bobower Yeshiva*

October 16, 2007

Page 1.

GOVORI v AGATE CORP.

Bnei Zion, 20 AD3d 456).

In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff's hospital records and magnetic resonance imaging reports were without probative value since they were neither affirmed nor certified (*see Rodriguez v Cesar*, 40 AD3d 731, 732-732; *Mejia v De Rose*, 35 AD3d 407, 408), the affirmation of the plaintiff's treating physician was without probative value since the conclusions were reached in reliance upon the unsworn reports of others (*see Furrs v Griffith*, 43 AD3d 389, 390; *Phillips v Zilinsky*, 39 AD3d 728, 729; *Porto v Blum*, 39 AD3d 614, 615), and the plaintiff's affidavit was insufficient to overcome these deficiencies (*see Garcia v Solbes*, 41 AD3d 426, 427; *Fisher v Williams*, 289 AD2d 288, 289).

SCHMIDT, J.P., SPOLZINO, SKELOS, LIFSON and McCARTHY, 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