

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

D16902
G/cb

_____AD3d_____

Submitted - October 17, 2007

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

2006-07586

DECISION & ORDER

Marie Patterson, appellant, v NY Alarm Response Corp.,
et al., respondents.

(Index No. 013052/04)

Kahn Gordon Timko & Rodriques, P.C., New York, N.Y. (Subrata Sengupta of
counsel), for appellant.

Cheven, Keely & Hatzis, New York, N.Y. (Mayu Miyashita of counsel), for
respondents.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Price, J.), dated June 14, 2006, as granted that branch of the defendants' motion which was for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants met their prima facie burden of showing 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 Eyler*, 79 NY2d 955; *see also Meyers v Bobower Yeshiva Bnei Zion*, 20 AD3d 456).

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In opposition, the plaintiff failed to raise a triable issue of fact. Initially, all of the plaintiff's submissions, with the exception of the Riverside Health System records, the plaintiff's magnetic resonance imaging (hereinafter MRI) reports, and the medical report of Dr. Alice Chen dated April 16, 2003, were without probative value since those submissions consisted of either uncertified records or unaffirmed medical reports (*see Rodriguez v Cesar*, 40 AD3d 731; *Meija v DeRose*, 35 AD3d 407).

The plaintiff's MRI reports, and Dr. Chen's report of April 16, 2003, merely showed that as of those dates, the plaintiff had disc herniations at C3-4, C5-6, L5-S1, disc protrusions at L4-5 and C2-3, disc bulges at C6-7 and L3-4, and cervical radiculitis at C5-6. The mere existence of a herniated or bulging disc, and even radiculopathy, is not evidence of a serious injury in the absence of objective evidence of the extent of the alleged physical limitations resulting from the disc injury and its duration (*see Meija v DeRose*, 35 AD3d 407; *Yakubov v CG Trans. Corp.*, 30 AD3d 509; *Cerisier v Thibiu*, 29 AD3d 507; *Bravo v Rehman*, 28 AD3d 694; *Kearse v New York City Tr. Auth.*, 16 AD3d 45; *Diaz v Turner*, 306 AD2d 241; *see also Furrs v Griffith*, 43 AD3d 389).

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

ENTER:



James Edward Pelzer
Clerk of the Court