

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

D17291
Y/kmg

_____AD3d_____

Submitted - October 31, 2007

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

2007-05625

DECISION & ORDER

Tommy Gonzalez, respondent, v
Tessie San Fratello, appellant.

(Index No. 7229/05)

Desena & Sweeney, LLP (Rivkin Radler, LLP, Uniondale, N.Y. [Evan H. Krinick, Cheryl F. Korman, and Melissa M. Murphy] of counsel), for appellant.

Scott J. Zlotolow, Sayville, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Nassau County (Phelan, J.), dated May 8, 2007, which denied her 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 order is affirmed, with costs.

In support of her motion for summary judgment dismissing the complaint, the defendant demonstrated, prima facie, 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 Elyer*, 79 NY2d 955, 956-957). However, in opposition, the plaintiff raised a triable issue of fact. The plaintiff presented, inter alia, an affidavit from his treating orthopedic surgeon stating that his personal review and comparison of Magnetic Resonance Imaging films taken before and shortly after the subject accident revealed that the accident caused “a posttraumatic lumbar L-5 disc herniation with resultant left S1 nerve root compression,” which

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required a “lumbar L5-S1 laminectomy and discectomy in order to remove the offending disc herniation,” and which resulted in specified limitations in the plaintiff’s ranges of motion that were significant and permanent in nature (*see Paz v Wydrzynski*, 41 AD3d 453; *compare McNeil v Dixon*, 9 AD3d 481). Thus, summary judgment was properly denied.

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

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court