

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

D17320
O/kmg

_____AD3d_____

Submitted - November 14, 2007

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

2006-09643

DECISION & ORDER

Nikolai Paradizov, et al., appellants,
v Hue Doan, et al., respondents.

(Index No. 42606/99)

Gershbaum & Weisz, P.C., New York, N.Y. (Charles Gershbaum of counsel), for appellants.

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

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Kings County (Kramer, J.), dated August 16, 2006, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that none of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with costs, and the motion for summary judgment dismissing the complaint is denied.

The defendants failed to make a prima facie showing that the plaintiffs 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 Eyster*, 79 NY2d 955, 956-957). The defendants did not provide any objective evidentiary basis for their expert orthopedist's opinion that each of the plaintiffs enjoyed a "full range of motion" and that the plaintiff Nikolai Paradizov experienced only "slight restrictions of motion of the back" which, in the expert's view, were "entirely

December 18, 2007

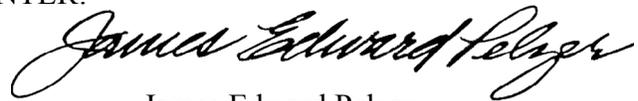
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ascribable” to a subsequent accident (*Coburn v Samuel*, 44 AD3d 698; *see Cedillo v Rivera*, 39 AD3d 453). Therefore, the defendants’ motion for summary judgment dismissing the complaint should have been denied (*see Ayotte v Gervasio*, 81 NY2d 1062), regardless of the sufficiency of the plaintiffs’ opposition (*see Weingard v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

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

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court