

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

D17409
X/kmg

_____AD3d_____

Submitted - November 28, 2007

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
RUTH C. BALKIN, JJ.

2006-10526

DECISION & ORDER

Hazel Johnson, appellant, v Pierre Charles,
et al., respondents, et al., defendant.

(Index No. 14407/04)

Gary N. Rawlins, Brooklyn, N.Y. (Mitchell L. Perry of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Michael I. Josephs of counsel), for respondent Pierre Charles.

James G. Bilello, Westbury, N.Y. (John DiFalco of counsel), for respondent Henry Vargas.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Kramer, J.), dated September 11, 2006, which denied her motion, denominated as one for leave to renew and reargue, but which was, in actuality, one for leave to renew her opposition to the separate motions of the defendants Pierre Charles and Henry Vargas for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d), which had been granted in an order of the same court dated June 19, 2006.

ORDERED that the order is affirmed, with one bill of costs.

Initially, the plaintiff's motion, denominated as one for leave to renew and reargue, was in actuality one for renewal only (*see O'Brien v Richmond Mem. Hosp. & Health Ctr.*, 263 AD2d 532; *Cippitelli v Hower*, 54 AD2d 954). The plaintiff failed to offer reasonable justification as to why

January 15, 2008

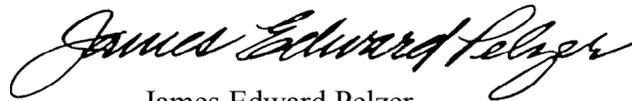
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the evidence proffered in support of her motion was not submitted at the time of the defendants' prior motions for summary judgment. Thus, the court providently exercised its discretion in denying the plaintiff's motion (*see Worrell v Parkway Estates, LLC*, 43 AD3d 436; *O'Dell v Caswell*, 12 AD3d 492).

RIVERA, J.P., FLORIO, CARNI and BALKIN, 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