

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

D17527
Y/kmg

_____AD3d_____

Submitted - November 30, 2007

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2006-10441

DECISION & ORDER

Chris Olic, appellant, v Gus G. Pappas,
et al., respondents.

(Index No. 25588/04)

Sackstein, Sackstein & Lee, LLP, Garden City, N.Y. (Laurence D. Rogers of counsel), for appellant.

Saretsky Katz Dranoff & Glass, LLP, New York, N.Y. (Elan Raday and Howard R. Cohen of counsel), for respondents Gus G. Pappas and Nicholas T. Pappas, and Rubin, Fiorella & Friedman, LLP, New York, N.Y. (Grant M. Meisels of counsel), for respondents Louis Klarevas, Dollar Thrifty Automotive Group, Inc., and Dollar Rent A Car, Inc. (one brief filed).

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), dated April 21, 2006, which granted the motion of the defendants Gus G. Pappas and Nicholas T. Pappas and the separate motion of the defendants Louis Klarevas, Dollar Thrifty Automotive Group, Inc., and Dollar Rent a Car, Inc., 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).

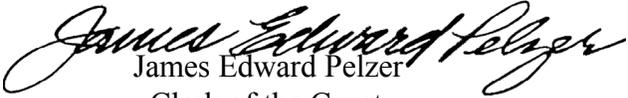
ORDERED that the order is reversed, on the law, with costs, and the motions for summary judgment dismissing the complaint are denied.

The evidence which the defendants submitted in support of their motions failed to eliminate all issues of fact as to whether the plaintiff sustained a fracture of the cervical region of the

spine as a result of the subject motor vehicle accident (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, it is not necessary to consider the sufficiency of the plaintiff's opposition papers (*see Alvarez v Prospect Hosp.* 68 NY2d at 324; *Wein v Amato Properties, LLC*, 30 AD3d 506, 508).

MASTRO, J.P., DILLON, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court