

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

D17754
W/kmg

_____AD3d_____

Submitted - January 2, 2008

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
HOWARD MILLER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2007-05321

DECISION & ORDER

Tomas Cabrera, et al., respondents, v
Jean Momperousse, et al., appellants.

(Index No. 14577/06)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for appellants.

Louis C. Fiabane, New York, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants appeal from an order of the Supreme Court, Kings County (Ambrosio, J.), dated May 7, 2007, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff Tomas Cabrera did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint. In support of their motion, the defendants submitted evidence that the plaintiff Tomas Cabrera (hereinafter the injured plaintiff) had significant restrictions in motion of the lumbar and cervical regions of his spine (*see Bentivegna v Stein*, 42 AD3d 555, 556; *see also McDowall v Abreu*, 11 AD3d 590, 591; *Meyer v Gallardo*, 260 AD2d 556, 556-557). Accordingly, the defendants failed to establish, prima facie, that the injured 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 Eycler*, 79 NY2d 955, 956-957). Under these circumstances,

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it is unnecessary to consider whether the papers submitted by the plaintiffs in opposition to the defendants' motion were sufficient to raise a triable issue of fact (*see Coscia v 938 Trading Corp.*, 283 AD2d 538).

PRUDENTI, P.J., SKELOS, MILLER, COVELLO and McCARTHY, 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