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

D17840
X/kmg

_____AD3d_____ Argued - December 17, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2006-09016 DECISION & ORDER

Luanne Washington, etc., et al., appellants,
v Sherri Cross, et al., respondents.

(Index No. 20723/03)

Barry Siskin, New York, N.Y. (Flora Rainer of counsel), for appellants.

Milber, Makris, Plousadis & Seiden, LLP, Woodbury, N.Y. (Lorin A. Donnelly of counsel), for respondent Sherri Cross.

Boeggeman, George & Corde, P.C., White Plains, N.Y. (Cynthia Dolan of counsel), for respondent Roger E. Gair.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Westchester County (Murphy, J.), entered August 16, 2006, which granted those branches of the motion of the defendant Roger E. Gair and the cross motion of the defendant Sherri Cross which were for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d).

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

The medical evidence which the defendants submitted in support of their respective motion and cross motion, inter alia, for summary judgment dismissing the complaint, established that, as a result of the subject motor vehicle accident, the plaintiffs sustained only sprains and/or strains, and accordingly, neither of them sustained a serious injury within the meaning of Insurance Law §

5102(d) (*see Toure v Avis Rent a Car Sys*., 98 NY2d 345, 352; *Gaddy v Eyler*, 79 NY2d 955, 956-957; *Hasner v Budnik*, 35 AD3d 366, 368; *Forte v Vaccaro*, 175 AD2d 153). In opposition to the motion and cross motion, the plaintiffs failed to raise a triable issue of fact. The plaintiffs' remaining contentions regarding the propriety of the cross motion and the admissibility of the defendants' evidence are without merit.

SPOLZINO, J.P., SKELOS, FLORIO and ANGIOLILLO, JJ., concur.

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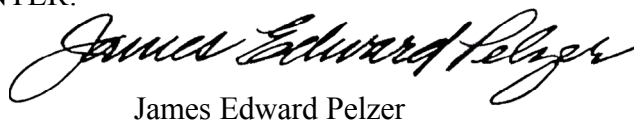

James Edward Pelzer
Clerk of the Court