

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

D18041  
G/kmg

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Submitted - January 22, 2008

A. GAIL PRUDENTI, P.J.  
ROBERT A. LIFSON  
JOSEPH COVELLO  
RUTH C. BALKIN, JJ.

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2007-01129

DECISION & ORDER

Antonio Sanchez, respondent, v Williamsburg  
Volunteer of Hatzolah, Inc., et al., appellants.

(Index No. 2237/05)

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Siler & Ingber, LLP, Garden City, N.Y. (Jeffrey B. Siler of counsel), for appellants.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Balter, J.), dated November 27, 2006, which denied their motion for summary judgment dismissing the complaint on the ground, inter alia, 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 defendants' motion for summary judgment dismissing the complaint is granted.

The defendants made a prima facie showing, through the plaintiff's deposition testimony, that the 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 Eyler*, 79 NY2d 855; *Kearse v New York City Tr. Auth.*, 16 AD3d 45, 51-52). At his deposition, the plaintiff testified that, as a result of the subject motor vehicle accident, he missed approximately five weeks from his job as a welder. The plaintiff's alleged injuries did not prevent him from performing "substantially all" of the material acts constituting his customary daily activities during at least 90 out of the first 180 days following the accident (*see Letellier v Walker*, 222 AD2d 658). The evidence which the plaintiff presented in opposition to the motion failed to raise a triable issue

February 19, 2008

Page 1.

SANCHEZ v WILLIAMSBURG VOLUNTEER OF HATZOLAH, INC.

of fact (*see* CPLR 3212[b]). In view of the foregoing, we need not address the defendants' remaining contention.

PRUDENTI, P.J., LIFSON, COVELLO 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