

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

D18119
W/hu

_____AD3d_____

Submitted - January 16, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
DAVID S. RITTER
EDWARD D. CARNI, JJ.

2007-01051

DECISION & ORDER

Jimmy Wu, etc., et al., appellants, v Ronaldo Braga,
et al., respondents.

(Index No. 18160/04)

Krause & Mauser, LLP, New York, N.Y. (Robert E. Burke of counsel), for appellants.

Richard T. Lau, Jericho, N.Y. (Linda Meisler of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Queens County (O'Donoghue, J.), dated November 20, 2006, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff Jimmy Wu did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants made a prima facie showing that the plaintiff Jimmy Wu (hereinafter the infant 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 Eylar*, 79 NY2d 955, 956-957). In opposition, the plaintiffs failed to raise a triable issue of fact. Contrary to the plaintiffs' contention, they failed to raise a triable issue of fact as to whether the infant plaintiff

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was prevented from performing substantially all of his daily activities for not less than 90 of the first 180 days subsequent to the subject accident (*see Duke v Saurelis*, 41 AD3d 770, 771; *Sainte-Aime v Ho*, 274 AD2d 569, 570).

RIVERA, J.P., LIFSON, RITTER and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, prominent initial "J".

James Edward Pelzer
Clerk of the Court