

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

D18280
Y/kmg

_____AD3d_____

Submitted - January 2, 2008

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

2007-01373

DECISION & ORDER

Jean Edriste, appellant, v Jose A. Morales,
respondent.

(Index No. 9226/04)

Viscardi, Basner & Bigelow, P.C., Jamaica, N.Y. (Craig K. Tyson of counsel), for
appellant.

Bryan M. Rothenberg, Hicksville, N.Y. (Fiedelman & McGaw [Dawn C. DeSimone]
of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Nassau County (Mahon, J.), dated December 12, 2006, which granted
the defendant's motion for summary judgment dismissing the complaint on the ground that she 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 defendant's
motion for summary judgment dismissing the complaint is denied.

The defendant made a prima facie showing 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 Eycler*, 79 NY2d 955, 956-957). In opposition, the
plaintiff raised a triable issue of fact through the submission of an affirmed magnetic resonance
imaging report finding a herniated disc in her lumbar spine and the affirmed report of her examining
physician, who averred that her cervical and lumbar spine ranges of motion were diminished on all

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planes as quantified in the report (*see Cordero v Ford Credit Titling Trust Ins. Ctr.*, 39 AD3d 796, 796-797; *Hyun Jun Kim v Collazo*, 38 AD3d 842, 842-843; *Santiago v Rodriguez*, 38 AD3d 639, 640; *Lim v Tiburzi*, 36 AD3d 671, 672; *Collado v Pineda*, 31 AD3d 684, 685). Accordingly, the Supreme Court should not have granted the defendant's motion for summary judgment dismissing the complaint.

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