

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

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_____AD3d_____

Submitted - January 16, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
MARK C. DILLON
RUTH C. BALKIN, JJ.

2007-06763

DECISION & ORDER

Alicia Altreche, et al., respondents, v Gilmar
Masonry Corp., et al., appellants.

(Index No. 28380/05)

Marjorie E. Bornes, New York, N.Y., for appellants.

Neil Kalra, P.C., Forest Hills, N.Y. (William G. McCabe of counsel), for respondents.

In an action, inter alia, to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated April 24, 2007, which denied their motion for summary judgment dismissing the complaint insofar as asserted by the plaintiff Alicia Altreche on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants met their prima facie burden of establishing that the plaintiff Alicia Altreche (hereinafter 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, 350-351; *Gaddy v Eyler*, 79 NY2d 955, 956-957). In opposition, the plaintiffs raised a triable issue of fact as to whether the plaintiff sustained a serious injury under the permanent loss and permanent consequential and/or significant limitation of use categories of Insurance Law § 5102(d) to her cervical and/or lumbar spines as a result of the subject accident. The opinion of the plaintiff's treating physician was based both on his contemporaneous and his most recent examinations of the plaintiff, as well as upon his review of, inter alia, the plaintiff's cervical and lumbar magnetic resonance imaging

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reports, which showed, among other things, disc bulges at C2 through C5 and a disc herniation at L5-S1. He opined that the plaintiff's spinal injuries and range of motion limitations observed were permanent, and were causally related to the subject accident (*see Morales v Theagene*, 46 AD3d 775; *Nigro v Kovac*, 45 AD3d 547, 548; *Green v Nara Car & Limo, Inc.*, 42 AD3d 430, 431). Contrary to the defendants' contention on appeal, the plaintiffs adequately explained the gap in the plaintiff's treatment (*see Gibson v Tordoya*, 44 AD3d 1000, 1007; *Black v Robinson*, 305 AD2d 438, 439-440).

SPOLZINO, J.P., SANTUCCI, DILLON and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court