

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

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Submitted - February 13, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
HOWARD MILLER
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2007-04475

DECISION & ORDER

Marcella Dinten-Quiros, appellant,
v Kofi E. Brown, respondent.

(Index No. 11287/04)

Ameduri, Galante & Friscia, Staten Island, N.Y. (Anthony L. Galante of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from much of an order of the Supreme Court, Richmond County (Giacobbe, J.), dated March 26, 2007, as denied that branch of her motion which was for leave to renew her opposition to the defendant's prior 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), which had been granted in an order of the same court dated March 27, 2006.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In support of that branch of her motion which was for leave to renew, the plaintiff was required to proffer both new facts not presented on the prior motion that would warrant denial of the defendant's motion for summary judgment dismissing the complaint, and a reasonable justification for the failure to have presented such facts at that time (*see* CPLR 2221[e][2],[3]; *Madison v Tahir*, 45 AD3d 744; *St. Claire v Gaskin*, 295 AD2d 336, 337). Here, the plaintiff did not provide a

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reasonable justification for her failure to proffer the alleged new facts in opposition to the defendant's prior motion. Moreover, the alleged new facts would not have warranted denial of the defendant's motion for summary judgment. Therefore, the Supreme Court properly denied that branch of the plaintiff's motion which was for leave to renew.

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, 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