

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

D18447  
X/hu

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Argued - February 14, 2008

STEVEN W. FISHER, J.P.  
HOWARD MILLER  
MARK C. DILLON  
WILLIAM E. McCARTHY, JJ.

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2006-06415

DECISION & ORDER

Ronald Jones, appellant, v Patrick N. Gooding,  
respondent.

(Index No. 32067/99)

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Law Offices of Adam M. Thompson, P.C., New York, N.Y., for appellant.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from stated portions of an order of the Supreme Court, Kings County (Rivera, J.), dated May 19, 2006, which, inter alia, granted that branch of the defendant's renewed motion which was, in effect, pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint.

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

The Supreme Court properly granted that branch of the defendant's renewed motion which was, in effect, pursuant to CPLR 4401 for judgment as a matter of law since "upon the evidence presented, there [was] no rational process by which the fact trier could" find that the plaintiff sustained a serious injury (*Szczerbiak v Pilat*, 90 NY2d 553, 556; *see Crespo v Kramer*, 295 AD2d 467, 468). Since the plaintiff missed only one day of work as a result of the injuries he sustained in the subject motor vehicle accident, he failed to establish a prima facie case that he suffered a

medically-determined injury which prevented him from “performing substantially all of the material acts which constitute[d] [his] usual and customary daily activities” for at least 90 of the first 180 days following the accident (Insurance Law § 5102[d]; *see Crespo v Kramer*, 295 AD2d at 468).

FISHER, J.P., MILLER, DILLON 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