

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

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Submitted - March 12, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-07451

DECISION & ORDER

Sulayman Abari, respondent, v Afza Empire, Inc.,
et al., appellants.

(Index No. 20239/05)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Thomas Torto [Jason Levine] of counsel), for appellants.

Hach & Rose, LLP, New York, N.Y. (Philip S. Abate of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated June 21, 2007, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff 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 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). However, contrary to the defendants' contention, the affirmed report of the plaintiff's treating neurologist was sufficient to raise a triable issue of fact. Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

SKELOS, J.P., SANTUCCI, COVELLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 22, 2008

ABARI v AFZA EMPIRE, INC.