

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

D19657
O/kmg

_____AD3d_____

Submitted - May 14, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-11673

DECISION & ORDER

Jose S. Zavala, respondent, v
Dawn Ann Shevlin, appellant.

(Index No. 18734/05)

Shapiro, Beilly, Rosenberg & Aronowitz, LLP, New York, N.Y. (Roy J. Karlin of counsel), for appellant.

Marie F. McCormack, P.C., Garden City, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Nassau County (Woodard, J.), entered November 19, 2007, which denied her 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 defendant met her prima facie burden by 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 Eyles*, 79 NY2d 955, 956-957). However, in opposition, the plaintiff raised a triable issue of fact.

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 17, 2008

ZAVALA v SHEVLIN