

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

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O/kmg

_____AD3d_____

Submitted - May 21, 2008

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

2007-05607

DECISION & ORDER

Lidia E. Benavides, appellant, v
Hernan Peralta, et al., respondents.

(Index No. 04-15014)

Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker of counsel), for appellant.

Richard T. Lau, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated January 29, 2007, which granted the defendants' 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).

ORDERED that the order is affirmed, with costs.

The defendants met their prima facie burden of 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 Eyler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact. The affirmation of the plaintiff's treating physician was without any probative value since it is clear that in concluding that the plaintiff sustained a herniated disc at L5-S1, he relied on the unsworn magnetic resonance imaging (hereinafter MRI) reports of another physician (*see Seebaran v Mendonca*, _____AD3d_____, 2008 NY Slip Op 04342 [2d Dept 2008]; *Malave v Basikov*, 45 AD3d 539; *Verette v Zia*, 44 AD3d 747; *Furrs v*

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Griffith, 43 AD3d 389; *see also Friedman v U-Haul Truck Rental*, 216 AD2d 266, 267). Similarly, the unsworn MRI reports themselves were without probative value (*see Laurent v McIntosh*, 49 AD3d 820; *Patterson v NY Alarm Response Corp.*, 45 AD3d 656; *Verette v Zia*, 44 AD3d 747; *Nociforo v Penna*, 42 AD3d 514; *see also Grasso v Angerami*, 79 NY2d 813; *Pagano v Kingsbury*, 182 AD2d 268).

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