

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

D19884
O/prt

_____AD3d_____

Submitted - May 14, 2008

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

2007-07342

DECISION & ORDER

Justin A. Giordano, appellant, v Allstarz
Limousine, Ltd., et al., respondents.

(Index No. 17173/05)

Harold Solomon, Rockville Centre, N.Y. (Bernard G. Chambers of counsel), for appellant.

Barry and Associates, LLC, Plainview, N.Y. (Rhonda H. Barry of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), entered July 8, 2007, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

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; *Kearse v New York City Tr. Auth.*, 16 AD3d 45, 49-50). Contrary to the Supreme Court's determination, in opposition, the plaintiff raised a triable issue of fact as to whether he sustained a serious injury under the permanent, consequential, and/or significant limitation of use categories of Insurance Law § 5102(d) to the cervical and/or lumbar regions of his spine as a result of the subject

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accident. The plaintiff's treating neurologists and chiropractor opined that the plaintiff's spinal injuries and range-of-motion limitations were significant and permanent, and were causally related to the subject accident, based on their contemporaneous and most recent examinations of the plaintiff, as well as their review of the affirmed cervical spine magnetic resonance imaging report prepared by the plaintiff's treating radiologist, which showed bulging discs at C4-5 and C5-6 and a disc herniation at C3-4 (see *Casey v Mas Transp., Inc.*, 48 AD3d 610; *Gibson v Tordoya*, 44 AD3d 1000; *Green v Nara Car & Limo, Inc.*, 42 AD3d 430; *Francovig v Senekis Cab Corp.*, 41 AD3d 643, 644-645; *Hyun Jun Kim v Collazo*, 38 AD3d 842; *Lim v Tiburzi*, 36 AD3d 671; *Clervoix v Edwards*, 10 AD3d 626).

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

ENTER:



James Edward Pelzer
Clerk of the Court