

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

D19968  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 5, 2008

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2007-11109

DECISION & ORDER

Manuel Ciordia, et al., respondents, v  
Daniela Luchian, et al., appellants.

(Index No. 5795/06)

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Cheven Keely Hatzis, New York, N.Y. (Mayu Miyashita of counsel), for appellant Sabir Brdarevic.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for appellants Daniela Luchian and Kazi Asaduzzaman.

Russo, Darnell & Lodato, LLP, East Meadow, N.Y. (Adam W. Weiss of counsel), for respondents.

In action to recover damages for personal injuries, the defendants Daniela Luchian and Kazi Asaduzzaman appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated October 26, 2007, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them on the ground that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d), and the defendant Sabir Brdarevic separately appeals, as limited by his brief, from so much of the same order as denied his separate motion for the same relief.

ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs payable to the appellants appearing separately and filing separate briefs, and the defendants' separate motions for summary judgment dismissing the complaint are granted.

September 9, 2008

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The defendants made a prima facie showing that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject motor vehicle accident in June 2005 (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyles*, 79 NY2d 955, 956-957). In opposition, the plaintiffs failed to raise a triable issue of fact (*see D'Alba v Yong-Ae Choi*, 33 AD3d 650). Crucially, the affirmed reports of the plaintiffs' examining physicians failed to address the findings of the defendants' examining radiologist, which attributed the condition of the plaintiffs' lumbosacral spines to degenerative processes (*id.* at 651). The plaintiffs also failed to proffer competent medical evidence that they were unable to perform substantially all of their daily activities for not less than 90 of the first 180 days subsequent to the accident (*see Letellier v Walker*, 222 AD2d 658).

MASTRO, J.P., FLORIO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court