

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

D20167
G/hu

_____AD3d_____

Submitted - June 4, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-11533

DECISION & ORDER

Michael Hurtte, respondent, et al., plaintiffs, v
Budget Roadside Care, et al., defendants, Neville
Thompson, appellant.

(Index No. 24811/02)

Reardon & Sclafani, P.C., Tarrytown, N.Y. (Vincent M. Sclafani and Michael V. Sclafani of counsel), for appellant.

Harmon, Linder & Rogowsky, New York, N.Y. (Mitchell Dranow of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the defendant Neville Thompson appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated July 11, 2007, which denied that branch of his motion, made jointly with all the defendants, which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Michael Hurtte against him on the ground that Michael Hurtte did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The appellant failed to meet his prima facie burden of showing that the plaintiff Michael Hurtte did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident. The medical report of the appellant's examining orthopedist, Dr. Philip G. Taylor, noted findings of significant range-of-motion limitations (*see Jenkins v Miled Hacking*

August 12, 2008

Page 1.

HURTTE v BUDGET ROADSIDE CARE

Corp., 43 AD3d 393; *Bentivegna v Stein*, 42 AD3d 555). Accordingly, since the appellant failed to meet his prima facie burden, it is unnecessary to consider the sufficiency of the evidence submitted in opposition to the motion (*see Zamaniyan v Vrabeck*, 41 AD3d 472).

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court