

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

D20412  
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Submitted - September 3, 2008

PETER B. SKELOS, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2007-04911

DECISION & ORDER

Lori A. Stefko, respondent, v Murat Arslan,  
appellants.

(Index No. 3601/04)

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Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck and Michael I. Josephs of counsel), for appellants Murat Asland and Aleka Taxi, Inc.

Gerber & Gerber, Brooklyn, N.Y. (Thomas Torto of counsel), for appellants Elfar Ahmed and Gymnastics Transit, Inc.

Friedman & Moses, LLP, New York, N.Y. (Steven B. Dorfman of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Murat Arslan and Aleka Taxi, Inc., appeal, and the defendants Elfar Ahmed and Gymnastics Transit, Inc., separately appeal, from an order of the Supreme Court, Kings County (Knipel, J.), dated March 28, 2007, which denied their respective motions for summary judgment dismissing the complaint insofar as asserted against them 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 one bill of costs.

On their motions for summary judgment, the defendants met their prima facie burdens by showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law §

September 23, 2008

Page 1.

STEFKO v ARSLAN

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, with her submissions, raised a triable issue of fact as to whether she sustained a serious injury to her cervical and/or lumbar spine under the significant limitation of use category of Insurance Law § 5102(d) as a result of the subject accident (*see Altreche v Gilmar Masonry Corp.*, 49 AD3d 479; *Lim v Tiburzi*, 36 AD3d 671; *Shpakovskaya v Etienne*, 23 AD3d 368; *Clervoix v Edwards*, 10 AD3d 626; *Acosta v Rubin*, 2 AD3d 657; *Rosado v Martinez*, 289 AD2d 386; *Vitale v Lev Express Cab Corp.*, 273 AD2d 225).

SKELOS, J.P., RITTER, DILLON, CARNI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court