

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

D20451
Y/kmg

_____AD3d_____

Submitted - September 3, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
HOWARD MILLER
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-11520

DECISION & ORDER

Flavio Martinez, respondent, v Shahid
Ullah, appellant, et al., defendant.

(Index No. 4150/05)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Colin F. Morrissey of counsel), for appellant.

Law Office of Michael Singer, P.C., New York, N.Y. (Elizabeth Mark Meyerson of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Shahid Ullah appeals from an order of the Supreme Court, Kings County (Dabiri, J.), dated October 26, 2007, which denied his motion for summary judgment dismissing the complaint insofar as asserted against him 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 costs.

The Supreme Court properly denied the appellant's motion for summary judgment since there are questions of fact as to whether the plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d) (*see* CPLR 3212[b]; *Marques v Conlon*, 302 AD2d 566).

SPOLZINO, J.P., SANTUCCI, MILLER, DICKERSON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 30, 2008

MARTINEZ v ULLAH