

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

D20584
Y/hu

_____AD3d_____

Submitted - September 17, 2008

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

2007-11257

DECISION & ORDER

John Donadio, et al., respondents, v Stephan
Doukhnych, appellant, et al., defendants.

(Index No. 13562/03)

Leahey & Johnson, P.C., New York, N.Y. (Peter James Johnson, Jr., of counsel), for
appellant.

Kerner & Kerner, New York, N.Y. (Kenneth T. Kerner of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant Stephan
Doukhnych appeals from so much of an order of the Supreme Court, Richmond County (Maltese,
J.), entered August 20, 2007, as denied his cross motion for summary judgment dismissing the
complaint insofar as asserted against him on the ground that the plaintiff John Donadio did not sustain
a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs,
and the cross motion of the defendant Stephan Doukhnych for summary judgment dismissing the
complaint insofar as asserted against him on the ground that the plaintiff John Donadio did not sustain
a serious injury within the meaning of Insurance Law § 5102(d) is granted.

In support of his cross motion, the defendant Stephan Doukhnych met his prima facie
burden of showing that the plaintiff John Donadio (hereinafter the injured 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 Eycler*, 79 NY2d 955, 956-957). In opposition,

October 7, 2008

Page 1.

DONADIO v DOUKHNYCH

the plaintiffs failed to raise a triable issue of fact. The plaintiffs relied solely on the affirmed medical report of the injured plaintiff's treating physician. That report failed to acknowledge that the injured plaintiff had been involved in two other accidents in which he injured his neck, back, and shoulders. In light of this omission, the treating physician's conclusion that the injuries and range of motion limitations to the injured plaintiff's neck, back, and shoulders observed during his examinations were the sole result of the subject accident was speculative (*see Seck v Minigreen Hacking Corp.*, 53 AD3d 608; *Silla v Mohammad*, 52 AD3d 681; *Munoz v Koyfman*, 44 AD3d 914; *Mooney v Edwards*, 12 AD3d 424).

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

ENTER:

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

James Edward Pelzer
Clerk of the Court