

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

D20876
W/kmg

_____AD3d_____

Submitted - May 14, 2008

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-07384

DECISION & ORDER

Joseph A. Soriano, appellant, v
Timothy J. Darrell, et al., respondents.

(Index No. 15770/04)

Tantone & Gulotta, Ronkonkoma, N.Y. (Anthony J. Gulotta and Charles W. Benton of counsel), for appellant.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated June 25, 2007, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants met their prima facie burden of showing that the 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 Eyler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff principally relied upon the affirmed narrative report of his treating physician. This report failed to raise a triable issue of fact as to whether the plaintiff sustained a permanent consequential limitation of use of a body organ or member and/or a significant limitation of use of a body function or system, since the findings

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contained therein were not based on a recent examination (*see Amato v Fast Repair Inc.*, 42 AD3d 477; *Ali v Mirshah*, 41 AD3d 748; *Mejia v DeRose*, 35 AD3d 407; *Marin v Kakivelis*, 251 AD2d 462). The plaintiff's remaining submissions were insufficient to raise a triable issue of fact (*see Shvartsman v Vildman*, 47 AD3d 700; *Collins v Stone*, 8 AD3d 321, 322).

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court