

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

D20982
W/prt

_____AD3d_____

Submitted - October 15, 2008

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-06571

DECISION & ORDER

Lesly Saint-Hilaire, et al., appellants, v
PV Holding Corp., et al., respondents.

(Index No. 5912/05)

Harmon, Linder & Rogowsky (Mitchell Dranow, Mineola, N.Y., of counsel), for appellants.

Blaine Magee, Rockville Centre, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Held, J.), dated June 26, 2007, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that the plaintiff Lesly Saint-Hilaire did not sustain a serious injury within the meaning of Insurance Law § 5102(d), and denied the plaintiffs' cross motion for summary judgment on the issue of serious injury.

ORDERED that the order is affirmed, with costs.

The defendants established their prima facie entitlement to judgment as a matter of law by showing that the plaintiff Lesly Saint-Hilaire (hereinafter the injured plaintiff) did not sustain a serious injury to his lumbar spine 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; *Byam v Waltuch*, 50 AD3d 939; *Giraldo v Mandanici*, 24 AD3d 419). In opposition, the plaintiffs failed to raise a triable issue of fact. The plaintiffs' experts failed to address the conclusions of the defendants' examining radiologist that the injuries to the injured plaintiff's lumbar spine were the result of long-standing degeneration and were unrelated to the subject accident. Thus, the conclusions of the plaintiffs' experts that the injuries to

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the injured plaintiff's lumbar spine were caused by the subject accident were mere speculation (*see Cornelius v Cintas Corp.*, 50 AD3d 1085; *Marrache v Akron Taxi Corp.*, 50 AD3d 973; *Giraldo v Mandanici*, 24 AD3d 419; *Lorthe v Adeyeye*, 306 AD2d 252).

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

For the reasons set forth above, the plaintiffs' cross motion for summary judgment on the issue of serious injury was properly denied by the court.

RIVERA, J.P., FLORIO, ANGIOLILLO, McCARTHY and CHAMBERS, 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