

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

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Submitted - May 21, 2008

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

2008-00100

DECISION & ORDER

Frantz A. Norme, respondent, v Abiodun O.
Ajons, et al., appellants.

(Index No. 17016/04)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Mead, Hecht, Conklin & Gallagher, LLP [Elizabeth Hecht], of counsel), for appellants.

Subin Associates LLP (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac and Diane K. Toner], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Kramer, J.) entered November 27, 2007, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED the order is affirmed, with costs.

The plaintiff, a pedestrian, was struck by the defendants' vehicle, and thrown over the car, hitting his right shoulder on the windshield and crashing to the ground. The Supreme Court correctly found that the defendants did not meet their burden of coming forward with sufficient evidence in admissible form to establish, prima facie, that the plaintiff did not sustain a serious injury as a result of the subject accident. The defendants' medical expert found significant decreases in the range of motion of the plaintiff's right shoulder more than three years after the accident and after the plaintiff underwent arthroscopic surgery to that shoulder, thus revealing the existence of an issue of

fact as to the severity and permanence of the plaintiff's injury (*see Jenkins v Miled Hacking Corp.*, 43 AD3d 393).

In light of the foregoing, we need not address the adequacy of the affidavit of the plaintiff's physician (*see Dzaferovic v Polonia*, 36 AD3d 652; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

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