

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

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Submitted - October 15, 2008

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

2007-08711

DECISION & ORDER

Christine Spikoski, plaintiff/counterclaim defendant-respondent, Stevie Burke, appellant, v HUB Truck Rental, et al., defendants/counterclaim plaintiffs-respondents.

(Index No. 11920/03)

Jacoby & Meyers, LLP (Finkelstein & Partners, Newburgh, N.Y. [Kristine M. Cahill], of counsel), for appellant.

Eschen, Frenkel & Weisman, LLP, Bay Shore, N.Y. (Robert I. Meyers of counsel), for plaintiff/counterclaim defendant-respondent.

Savona, D'Erasmus & Hyer LLC, New York, N.Y. (Raymond M. D'Erasmus and Joseph F. X. Savona of counsel), for defendants/counterclaim plaintiffs-respondents.

In an action to recover damages for personal injuries, the plaintiff Stevie Burke appeals from so much of an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated July 24, 2007, as granted that branch of the motion of the plaintiff/counterclaim defendant, Christine Spikoski, which was for summary judgment dismissing the counterclaim for indemnification or contribution asserted against her on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d), and, upon searching the record, awarded the defendants/counterclaim plaintiffs summary judgment dismissing the complaint insofar as asserted by him on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

February 10, 2009

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ORDERED that the appeal from so much of the order as granted that branch of the motion of the plaintiff/counterclaim defendant, Christine Spikoski, which was for summary judgment dismissing the counterclaim for indemnification or contribution asserted against her is dismissed, as the plaintiff Stevie Burke is not aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondents appearing separately and filing separate briefs.

The Supreme Court properly determined that the defendants/counterclaim plaintiffs were entitled to summary judgment dismissing the complaint insofar as asserted by the plaintiff Stevie Burke. The record demonstrated that Burke 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 Eyer*, 79 NY2d 955, 956-957).

Burke's remaining contentions are without merit.

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

ENTER:



James Edward Pelzer
Clerk of the Court