

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

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Submitted - December 3, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2008-06911

DECISION & ORDER

Iris Machat, respondent, v Angelo Mazzarino,
et al., defendants, Shakhov Pinkhasov, et al., appellants.

(Index No. 28341/05)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Feinman &
Grossbard, P.C. [Steven N. Feinman] of counsel), for appellants.

Sean H. Rooney, Brooklyn, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendants Shakhov Pinkhasov and AM USA, Inc., appeal from an order of the Supreme Court, Kings County (Vaughan, J.), dated June 11, 2008, which denied their motion for summary judgment dismissing the complaint insofar as asserted against him on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The appellants made a prima facie showing that the plaintiff did not sustain a serious injury to her right knee 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). However, the submissions of the plaintiff in opposition, which included an affirmation of her treating orthopedist, who performed surgery on her right knee three months after the accident, and an affirmation of her radiologist, who reported that an MRI taken approximately three weeks after the

accident revealed tears in that knee's menisci and cruciate ligaments, were sufficient to raise a triable issue of fact (*see Nigro v Kovac*, 45 AD3d 547-548). Accordingly, the Supreme Court properly denied the appellants' motion for summary judgment dismissing the complaint insofar as asserted against them.

FISHER, J.P., COVELLO, BALKIN 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