

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

D21872  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - December 17, 2008

PETER B. SKELOS, J.P.  
MARK C. DILLON  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2008-04093

DECISION & ORDER

Edwin Johnny Locke, respondent, v  
Sikamdar Ali Buksh, et al., appellants.

(Index No. 39085/05)

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Baker, McEvoy, Morrissey & Moskovits, P.C. (Stacy R. Seldin of counsel), for appellants.

Harmon, Linder & Rogowsky, New York, N.Y. (Mitchell Dranow 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 (Balter, J.), dated December 5, 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 that the order is affirmed, with costs.

The Supreme Court properly determined that the defendants failed to meet their prima facie burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyley*, 79 NY2d 955, 956-957). In support of their motion, the defendants relied upon, inter alia, the affirmed medical report of their examining orthopedic surgeon. In his report he noted the existence of significant limitations in the plaintiff's lumbar spine range of motion (*see Hurtte v Budget Roadside Care*, 54 AD3d 362; *Jenkins v Miled Hacking Corp.*, 43 AD3d 393; *Bentivegna v Stein*, 42 AD3d 555;

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*Zamaniyan v Vrabeck*, 41 AD3d 472). Under the circumstances, it is unnecessary to consider the sufficiency of the plaintiff's opposition papers (see *Hurtte v Budget Roadside Care*, 54 AD3d 362; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

SKELOS, J.P., DILLON, CARNI and LEVENTHAL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court