

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

D21978  
O/kmg

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Submitted - December 17, 2008

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

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2008-02449

DECISION & ORDER

Huguette M. Liautaud, respondent,  
v Jeremy V. Joseph, et al., appellants.

(Index No. 5681/05)

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Carman, Callahan & Ingham, LLP, Farmingdale, N.Y. (James M. Carman and Michael F. Ingham of counsel), for appellants.

Lever & Stolzenberg, LLP, White Plains, N.Y. (David Lever and Terence James Cortelli of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Jeremy V. Joseph and Budget Rent-A-Car, Inc., appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated January 24, 2008, which, in effect, denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted against them 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 failed to make a prima facie showing that the plaintiff 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, 350; *Gaddy v Eyler*, 79 NY2d 955, 956-957). In her bill of particulars, the plaintiff alleged that as a result of the accident, she sustained certain injuries to, inter alia, her cervical spine, lumbar spine, and right knee. The appellants failed to establish prima facie that these alleged injuries were not causally related to the accident, or were not serious within the meaning of Insurance Law § 5102(d) (*see McKenzie v Redl*, 47 AD3d 775, 776-777; *Dettori v Molzon*, 306 AD2d 308, 309; *Julemis v Gates*, 281 AD2d 396).

February 3, 2009

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Since the appellants failed to meet their initial burden of establishing their prima facie entitlement to summary judgment, it is unnecessary to consider the sufficiency of the plaintiff's papers in opposition (*see McKenzie v Redl*, 47 AD3d at 777; *Dettori v Molzon*, 306 AD2d at 309; *Julemis v Gates*, 281 AD2d at 396-397).

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