

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

D22022
X/prt

_____AD3d_____

Argued - January 13, 2009

REINALDO E. RIVERA, J.P.
HOWARD MILLER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-07681

DECISION & ORDER

Dante Hadley, et al., appellants, v
Ofir A. Keren, et al., respondents.

(Index No. 100890/05)

Napoli Bern Ripka, LLP, New York, N.Y. (Denise A. Rubin of counsel), for appellants.

Cohen, Kuhn & Associates, New York, N.Y. (Jonathan D. Gorham of counsel), for respondent Ofir A. Keren (joining in the other respondents' briefs).

Paul F. McAloon, P.C., New York, N.Y., for respondents Marie Christina Warren and United Services Automobile Association.

Rivkin Radler LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, and Melissa M. Murphy of counsel), for respondent Jose A. Miranda.

In an action to recover damages for personal injuries, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (Maltese, J.), dated June 13, 2007, as granted the separate motions of the defendants Marie Christine Warren and United Services Automobile Association, and the defendant Jose M. Miranda, for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that the plaintiffs did not sustain a serious injury within the meaning of Insurance Law § 5102(d) and granted those branches of the separate cross motions of the defendant Ofir A. Keren and the defendant Gennady Diefvsky which were for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d).

February 3, 2009

HADLEY v KEREN

Page 1.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the defendants appearing separately and filing separate briefs.

The defendants established, prima facie, that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 352; *Gaddy v Eyer*, 79 NY2d 955, 956-957). In opposition, the plaintiffs failed to raise a triable issue of fact (*see* CPLR 3212[b]).

RIVERA, J.P., MILLER, CARNI and McCARTHY, 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