

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

D22059
Y/kmg

_____AD3d_____

Submitted - December 17, 2008

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

2007-11262

DECISION & ORDER

Marlene Friscia, respondent, v Mak Auto, Inc.,
et al., defendants, Mary J. Scarola, appellant.

(Index No. 103130/05)

Votto & Cassata, LLP, Staten Island, N.Y. (Christopher J. Albee of counsel), for
appellant.

Joseph M. Palmiotto, New York, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant Mary J. Scarola
appeals from an order of the Supreme Court, Richmond County (McMahon, J.), dated October 15,
2007, which denied her motion for summary judgment dismissing the complaint insofar as asserted
against her 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 reversed, on the law, with costs, and the motion of the
defendant Mary J. Scarola for summary judgment dismissing the complaint insofar as asserted against
her is granted.

The defendant Mary J. Scarola met her prima facie burden of 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; *Gaddy v Eyler*, 79 NY2d 955).
In opposition, the plaintiff failed to raise a triable issue of fact. While the plaintiff's treating physician
indicated that when he examined the plaintiff shortly after the accident he found a limited range of

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motion in her cervical and lumbar spine, he failed to provide any quantified findings to support his assertions (*see Fiorillo v Arriaza*, 52 AD3d 465; *Duke v Saurelis*, 41 AD3d 770). In addition, the plaintiff failed to submit any competent evidence that she had sustained a vertebral fracture as a result of the accident (*cf. Poma v Ortiz*, 2 AD3d 616; *Smolyar v Krongauz*, 2 AD3d 518). Finally, in the absence of any competent medical evidence, the plaintiff's self-serving deposition testimony was insufficient to demonstrate the existence of a serious injury (*see Duke v Saurelis*, 41 AD3d 770).

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

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court