

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

D22177  
G/prt

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

Submitted - January 21, 2009

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
EDWARD D. CARNI  
RANDALL T. ENG, JJ.

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2008-01445

DECISION & ORDER

Michael Staff, respondent, v  
Mair Yshua, et al., appellants.

(Index No. 28146/06)

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Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Timothy M. Sullivan of counsel), for appellants.

Friedman & Moses, LLP, Garden City, N.Y. (Lisa M. Comeau 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 (Solomon, J.), dated December 13, 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 reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

Contrary to the Supreme Court's determination, the defendants' submissions were sufficient to establish, prima facie, their entitlement to judgment as a matter of law dismissing the complaint on the ground that the plaintiff did not sustain a serious injury as defined by Insurance Law § 5102(d) (*see Gaddy v Eyster*, 79 NY2d 955; *Batista v Olivo*, 17 AD3d 494; *Grant v Fofana*, 10 AD3d 446). The defendants presented the affirmation of an orthopedist, who, with a visual scale and goniometer, tested the range of motion of the plaintiff's left shoulder, right elbow, left hip, and left knee. The orthopedist reported that the ranges of motion all were within normal ranges, and set forth

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his specific measurements, and compared them to the norms. He also described other orthopedic tests that he performed, and reported that the results were all negative. The defendant's orthopedist concluded that the plaintiff's injuries were now resolved and without permanency, and that the plaintiff was capable of working and performing all of his daily living activities without restriction. In opposition, the plaintiff failed to raise a triable issue of fact as to whether he had sustained a serious injury (*see Luckey v Bauch*, 17 AD3d 411; *Kivlan v Acevedo*, 17 AD3d 321; *Fisher v Williams*, 289 AD2d 288).

MASTRO, J.P., FISHER, FLORIO, CARNI and ENG, 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