

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

D22369
C/kmg

_____AD3d_____

Submitted - February 4, 2009

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

2008-07115

DECISION & ORDER

Yacine Dioum, respondent,
v Milkyway Cab Corp., et al., defendants,
Omonia Cab Corp., et al., appellants.

(Index No. 25644/06)

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

Kaplan & Kaplan, Brooklyn, N.Y. (Cary H. Kaplan of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Omonia Cab Corp. and Shafi Ullah appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated June 26, 2008, as denied their motion 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 insofar as appealed from, with costs.

The Supreme Court properly determined that there are triable issues of fact requiring the denial of summary judgment.

MASTRO, J.P., FISHER, FLORIO and ENG, JJ., concur.

ENTER:


James Edward Pelzer

March 10, 2009

DIOUM v MILKYWAY CAB CORP.

Clerk of the Court

March 10, 2009

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