

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

D22418
G/prt

_____AD3d_____

Submitted - February 4, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2008-07009

DECISION & ORDER

Getl Leia Kasper, respondent, v
N&J Taxi, Inc., et al., appellants.

(Index No. 23928/04)

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

Law Offices of Michael M. Goldberg, P.C., New York, N.Y. (Frank H. Guzmán of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Agate, J.), entered June 11, 2008, 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 affirmed, with costs.

The Supreme Court properly determined that the defendants did not meet their 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 Eycler*, 79 NY2d 955, 956-957). In support of their motion, the defendants relied upon, inter alia, the affirmed medical report of Dr. S. Farkas, their examining orthopedist, who noted significant limitations in the plaintiff's cervical spine and left shoulder ranges of motion based upon

March 24, 2009

Page 1.

KASPER v N&J TAXI, INC.

his examination of her on May 21, 2007 (*see Hurtte v Budget Roadside Care*, 54 AD3d 362; *Perry v Brusini*, 53 AD3d 478; *Moorer v Amboy Bus Co., Inc.*, 52 AD3d 587).

Since the defendants failed to meet their prima facie burden, it is unnecessary to consider the sufficiency of the evidence submitted in opposition to the motion (*see Hurtte v Budget Roadside Care*, 54 AD3d 362; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

RIVERA, J.P., DILLON, MILLER, BALKIN and LEVENTHAL, 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