

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

D22571  
O/kmg

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Submitted - March 4, 2009

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
JOSEPH COVELLO  
ARIEL E. BELEN, JJ.

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2008-05036

DECISION & ORDER

Elaine Bryan, respondent, v Jennifer Berger,  
et al., defendants, New York City Transit  
Authority, et al., appellants.  
(and another action)

(Index No. 100339/05)

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Wallace D. Gossett, Brooklyn, N.Y. (Anita Isola of counsel), for appellants.

In an action to recover damages for personal injuries, the defendants New York City Transit Authority and Donna Cody appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (Maltese, J.), dated March 28, 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 reversed insofar as appealed from, on the law, with costs, and the motion of the defendants New York City Transit Authority and Donna Cody for summary judgment dismissing the complaint insofar as asserted against them is granted.

The defendants New York City Transit Authority and Donna Cody met their prima facie burden of showing that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact.

SPOLZINO, J.P., RITTER, COVELLO and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

March 31, 2009

BRYAN v BERGER