

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

D22785
Y/prt

_____AD3d_____

Submitted - March 11, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-06293

DECISION & ORDER

Robin Bradley, respondent, v Pablo Rodriguez,
et al., appellants, et al., defendant.

(Index No. 32332/06)

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

Gruenberg & Kelly, P.C., Ronkonkoma, N.Y. (John Aviles of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Pablo Rodriguez and Dreamon Limo, Inc., appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Balter, J.), dated May 16, 2008, as 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 appellants made a prima facie showing of their entitlement to judgment as a matter of law through the submission of the plaintiff's deposition testimony and the affirmation of their examining physician. However, in opposition, the plaintiff raised triable issues of fact. Accordingly, the appellants' motion for summary judgment was properly denied (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 21, 2009

BRADLEY v RODRIGUEZ