

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

D23323
T/prt

_____AD3d_____

Submitted - April 1, 2009

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

2008-09307

DECISION & ORDER

Maria Manzanares, respondent, v
Mikail Aliev, et al., appellants.

(Index No. 6555/07)

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

DerGarabedian & Dillon, Rockville Centre, N.Y. (Heather Nathan of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Balter, J.), dated September 16, 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 defendants met 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 opposition, the plaintiff's testimony at her deposition and the affidavit of her treating chiropractor were sufficient to raise a triable issue of fact as to whether she suffered from a medically-determined injury or impairment of a nonpermanent nature which prevented her from performing substantially

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all of her customary and usual daily activities during at least 90 out of the first 180 days following the subject accident (*see Valdes v Fang Yun Hu*, 307 AD2d 1033; *Frier v Teague*, 288 AD2d 177; *Hoo v Uribe*, 248 AD2d 440).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO, LEVENTHAL and LOTT, 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