

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

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Submitted - June 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2009-02828

DECISION & ORDER

Gladys Bojorquez, respondent, v Luis Sanchez,
appellant.

(Index No. 27436/07)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Mead, Hecht, Conklin & Gallagher, LLP [Sara Luca Salvi and Elizabeth M. Hecht], of counsel), for appellant.

Joseph A. Faraldo, Kew Gardens, N.Y., for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Schack, J.), dated January 30, 2009, which denied his 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 defendant made a prima facie showing of his entitlement to judgment as a matter of law (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). However, in opposition to the defendant's motion, the plaintiff submitted, inter alia, an affirmed X-ray report which revealed an avulsion fracture of the left hip, as well as an affirmation from her treating physician stating that he reviewed that X-ray report and concluded that the fracture was caused by the subject accident. This evidence was sufficient to raise a triable issue of fact as to whether the plaintiff sustained a serious injury under the fracture category of Insurance Law § 5102(d) as a result

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of the subject accident (*see Gould v Ombrellino*, 57 AD3d 608; *I Mei Chou v Welsh*, 15 AD3d 622; *Keevins v Drobbin*, 303 AD2d 463). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., DILLON, COVELLO, ENG and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court