

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

D24513
C/cb

_____AD3d_____

Submitted - September 9, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-03978

DECISION & ORDER

Leonid Sanevich, respondent, et al., plaintiff, v Yuriy Lyubomir, et al., appellants.

(Index No. 43107/07)

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

Lozner & Mastropietro (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac and Jillian Rosen], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated March 31, 2009, as denied that branch of their motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Leonid Sanevich on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants met their prima facie burden of showing that the plaintiff Leonid Sanevich (hereinafter 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; *see also Giraldo v Mandanici*, 24 AD3d 419; *Meyers v Bobower Yeshiva Bnei Zion*, 20 AD3d 456).

October 6, 2009

SANEVICH v LYUBOMIR

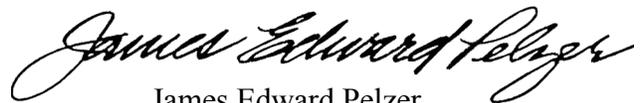
Page 1.

In opposition, Dr. Zina Turovsky, the plaintiff's treating physician, opined in an affirmation, based upon her contemporaneous and most recent examinations of the plaintiff and review of the magnetic resonance imaging report dated August 28, 2006, of the plaintiff's right shoulder and physical therapy records, that the plaintiff's right shoulder injury and observed range-of-motion limitations were significant and permanent, and causally related to the subject accident. Thus, the plaintiff raised a triable issue of fact as to whether he sustained a permanent consequential limitation of use and/or a significant limitation of use of his right shoulder as a result of the subject accident (*see Azor v Torado*, 59 AD3d 367, 368; *Williams v Clark*, 54 AD3d 942, 943; *Casey v Mas Transp., Inc.*, 48 AD3d 610, 611; *Green v Nara Car & Limo, Inc.*, 42 AD3d 430, 431; *Francovig v Senekis Cab Corp.*, 41 AD3d 643, 644-645).

The defendants' remaining contentions either are without merit or, based on our determination, have been rendered academic.

SKELOS, J.P., COVELLO, SANTUCCI, CHAMBERS and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court