

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

D25164
Y/prt

_____AD3d_____

Submitted - October 28, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-03657

DECISION & ORDER

Don Corbett, respondent, v Yobris Enterprises,
et al., appellants, et al., defendant.

(Index No. 23522/05)

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

Stuart Perry, P.C., Roslyn Heights, N.Y., for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants Yobris Enterprises and Rafael Santos appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated March 25, 2009, 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 affirmed, with costs.

The defendants Yobris Enterprises and Rafael Santos failed to make a prima facie showing that the plaintiff did not sustain a medically-determined injury of a nonpermanent nature which prevented her from performing her usual and customary daily activities for 90 of the first 180

November 24, 2009

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days following the subject accident (*see* Insurance Law § 5102[d]; *Alvarez v Dematas*, 65 AD3d 598). Accordingly, we need not consider the sufficiency of the papers submitted by the plaintiff in opposition to the motion (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

SKELOS, J.P., FLORIO, BALKIN, BELEN and AUSTIN, 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