

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

D25309  
W/kmg

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Submitted - November 4, 2009

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

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2009-00788

DECISION & ORDER

Zainab Annan, plaintiff, Rodney Blake, respondent,  
v Mohamed E. Abdelaziz, et al., appellants.

(Index No. 15753/05)

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Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for appellants.

Borrell & Riso, LLP, Staten Island, N.Y. (John Riso of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated January 8, 2009, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them by the plaintiff Rodney Blake on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them by the plaintiff Rodney Blake is granted.

The defendants met their prima facie burden of showing that the plaintiff Rodney Blake 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, Blake failed to raise a triable issue of fact. Initially, Blake's medical record from Staten Island Chiropractic Associates failed to raise a triable issue of fact because it was

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uncertified and unauthenticated and, thus, not in admissible form (*see* CPLR 4518[c]; *Stock v Otis Elev. Co.*, 52 AD3d 816). Moreover, the narrative reports of physicians and other health care providers contained in the medical record are unsworn and, thus, also not in admissible form (*see* *Grasso v Angerami*, 79 NY2d 813; *Sutton v Yener*, 65 AD3d 625; *McNeil v New York City Tr. Auth.*, 60 AD3d 1018; *Sapienza v Ruggiero*, 57 AD3d 643).

The affidavit of Blake's treating chiropractor, Dr. Denny Julewicz, also failed to raise a triable issue of fact. While Julewicz noted that Blake had significant limitations in the ranges of motion of the lumbar and cervical regions of his spine upon initial testing conducted on July 14, 2004, no such significant limitations existed when Blake was re-examined on November 14, 2008. In fact, on November 14, 2008, Blake had normal lumbar spine range of motion. While Blake showed some cervical spine limitation upon the testing on November 14, 2008, those limitations were not significant within the meaning of Insurance Law § 5102(d), and did not amount to a serious injury (*see* *Waldman v Dong Kook Chang*, 175 AD2d 204; *see also* *Trotter v Hart*, 285 AD2d 772).

Blake also failed to raise a triable issue of fact as to whether he sustained a medically-determined injury of a nonpermanent nature which prevented him from performing his usual and customary daily activities for 90 of the 180 days following the subject accident (*see* *Sainte-Aime v Ho*, 274 AD2d 569). In this case, the plaintiff was cleared by his own physician to return to work within one month of the subject accident.

RIVERA, J.P., COVELLO, ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court