

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

D25368
G/kmg

_____AD3d_____

Submitted - November 4, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2009-00227

DECISION & ORDER

Gloria Eusebio, appellant, v Veronica Yannetti,
respondent.

(Index No. 9027/07)

Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker of counsel), for
appellant.

Kaplan & McCarthy, East Elmhurst, N.Y. (Justin M. Delaire of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Suffolk County (Kerins, J.), dated September 29, 2008, which granted
the defendant's 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 reversed, on the law, with costs, and the defendant's
motion for summary judgment dismissing the complaint is denied.

The defendant met her 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 Eyler*, 79 NY2d 955, 956-957). In opposition
to the defendant's motion, the plaintiff principally relied on the affidavit of her treating chiropractor,
Dr. Nicholas Martin. In that affidavit, Dr. Martin opined, based upon his contemporaneous and most
recent examinations of the plaintiff and his review of the plaintiff's affirmed magnetic resonance

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imaging reports of her cervical and lumbar regions, which revealed, inter alia, a herniated disc at C4-5 and a disc bulge at C5-6, that the plaintiff's cervical and lumbar injuries 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 she sustained serious injury to her cervical and/or lumbar spine under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) as a result of the subject accident (*see Sanevich v Lyubomir*, 66 AD3d 665; *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).

Contrary to the defendant's contention, the plaintiff's cessation of treatment for her injuries was adequately explained in Dr. Martin's affidavit. Dr. Martin explained that the plaintiff stopped treatment in November 2006 because she had reached her maximum medical improvement and any further treatment would have merely been palliative in nature (*see Pommells v Perez*, 4 NY3d 566, 577).

DILLON, J.P., MILLER, ENG, HALL and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court