

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

D25399
C/prt

_____AD3d_____

Submitted - November 18, 2009

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

2009-04628

DECISION & ORDER

Xiomara Collado, respondent, v
Johnny A. Abouzeid, et al.,
appellants.

(Index No. 17540/06)

Richard T. Lau, Jericho, N.Y. (Keith E. Ford of counsel), for appellants.

Bracken & Margolin, LLP, Islandia, N.Y. (Patricia M. Meisenheimer of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from so much of an order of the Supreme Court, Suffolk County (Jones, Jr. J.), dated March 27, 2009, as denied their cross 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 insofar as appealed from, on the law, with costs, and the defendants' cross 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) is granted.

The defendants met their 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 Eycler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact.

In opposing the defendants' cross motion, the plaintiff principally relied upon the

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affidavit of Dr. Jeffrey Block, her treating chiropractor. Neither Dr. Block nor the plaintiff adequately explained the cessation of her treatment after May 2006 (*see Pommells v Perez*, 4 NY3d 566, 574; *see also Shaji v City of New Rochelle*, 66 AD3d 760; *Ciancio v Nolan*, 65 AD3d 1273). The plaintiff also failed to submit competent medical evidence that the injuries she allegedly sustained as a result of the subject accident rendered her unable to perform substantially all of her daily activities for not less than 90 days of the first 180 days thereafter (*see Ponciano v Schaefer*, 59 AD3d 605; *Sainte-Aime v Ho*, 274 AD2d 569). Therefore, the defendants' cross motion for summary judgment dismissing the complaint should have been granted.

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