

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

D25456
W/kmg

_____AD3d_____

Submitted - November 18, 2009

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

2009-00361

DECISION & ORDER

Gennadiy Fest, appellant, v Diane Agnew, et al.,
defendants, Sergey Barbashov, respondent.

(Index No. 33744/05)

William Pager, Brooklyn, N.Y., for appellant.

James G. Bilello, Westbury, N.Y. (Patricia McDonagh of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated December 11, 2008, which granted the motion of the defendant Sergey Barbashov for summary judgment dismissing the complaint insofar as asserted against him 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 defendant Sergey Barbashov established his prima facie entitlement to judgment as a matter of law by submitting evidence, including the plaintiff's deposition testimony and the affirmation of Barbashov's retained examining orthopedist, that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) (*see Charley v Goss*, 12 NY3d 750; *Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957; *Luckey v Bauch*, 17 AD3d 411; *Sims v Megaris*, 15 AD3d 468; *Check v Gacevk*, 14 AD3d 586; *Paul v Trerotola*, 11

December 22, 2009

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AD3d 441; *Mastaccioula v Sciarra*, 11 AD3d 434). In opposition, the plaintiff failed to raise a triable issue of fact.

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court