

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

D25851
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_____AD3d_____

Submitted - December 16, 2009

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

2009-05201

DECISION & ORDER

Leo Moore, respondent, v Mohammad Waheed,
et al., appellants, et al., defendants.

(Index No. 10747/07)

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

Leav & Steinberg, LLP, New York, N.Y. (Daniela F. Henriques of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Mohammad Waheed and Tamara Taxi, Inc., appeal from an order of the Supreme Court, Kings County (Miller, J.), dated April 8, 2009, which denied their 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 affirmed, with costs.

The defendants Mohammad Waheed and Tamara Taxi, Inc., failed to meet 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). The defendants did not address the plaintiff's claim, clearly set forth in his bill of particulars, that he sustained a medically-determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts

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which constituted his usual and customary daily activities for not less than 90 days during the 180 days immediately following the subject accident (*see Menezes v Khan*, 67 AD3d 654; *Negassi v Royle*, 65 AD3d 1311; *Alvarez v Dematas*, 65 AD3d 598; *Ismail v Tejada*, 65 AD3d 518). Accordingly, we need not consider the sufficiency of the papers submitted by the plaintiff in opposition to the motion (*see Corbett v Yobris Enters.*, 67 AD3d 955).

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