

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

D25855
H/kmg

_____AD3d_____

Submitted - November 18, 2009

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

2009-05843

DECISION & ORDER

Joshua Haber, respondent, v Ahsan Ullah, et al.,
appellants.

(Index No. 25494/04)

The Sullivan Law Firm, New York, N.Y. (Timothy M. Sullivan of counsel), for
appellants.

Sekas & Associates LLC, New York, N.Y. (Robert G. Ricco 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 (Saitta, J.), entered May 14, 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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint 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 Eyer*, 79 NY2d 955, 956-957; *see also Kearsse v New York City Tr. Auth.*, 16 AD3d 45, 49-50). In opposition, the plaintiff failed to raise a triable issue of fact. The medical submissions of Dr. Donald M. Kastenbaum were insufficient to raise a triable issue of fact since they were unaffirmed (*see Grasso v Angerami*, 79

NY2d 813; *Uribe-Zapata v Capallan*, 54 AD3d 936; *Choi Ping Wong v Innocent*, 54 AD3d 384; *Patterson v NY Alarm Response Corp.*, 45 AD3d 656; *Verette v Zia*, 44 AD3d 747; *Nociforo v Penna*, 42 AD3d 514; *Pagano v Kingsbury*, 182 AD2d 268). Moreover, the plaintiff failed to adequately explain the cessation of his medical treatment after 2004 (*see Pommels v Perez*, 4 NY3d 566; *Shaji v City of New Rochelle*, 66 AD3d 760; *Ciancio v Nolan*, 65 AD3d 1273). Furthermore, the plaintiff failed to submit competent medical evidence that the injuries he allegedly sustained as a result of the subject accident rendered him unable to perform substantially all of his 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).

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

ENTER:



James Edward Pelzer
Clerk of the Court