

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

D26253  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 27, 2010

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

---

2008-11477

DECISION & ORDER

Donna Barrington-Stotsky, appellant,  
v Charlette Robinson, respondent.

(Index No. 7364/07)

---

Wallace, Witty, Frampton & Veltry, P.C., Brentwood, N.Y. (Peter J. Graff of counsel), for appellant.

Schondebare & Korcz, Ronkonkoma, N.Y. (Amy B. Korcz 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 (Weber, J.), dated October 21, 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 failed to make a prima facie 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). The defendant's own examining neurologist reported findings of limitations in the ranges of motion of the cervical and lumbar regions of the plaintiff's spine (*see Powell v Prego*, 59 AD3d 417; *Norme v Ajons*, 57 AD3d 749; *Wright v AAA Constr. Servs., Inc.*, 49 AD3d 531; *Umar v Ohrnberger*, 46

February 23, 2010

Page 1.

BARRINGTON-STOTSKY v ROBINSON

AD3d 543; *Bentivegna v Stein*, 42 AD3d 555). Since the defendant failed to establish her prima facie entitlement to judgment as a matter of law, we need not examine the sufficiency of the plaintiff's opposition papers (see *Held v Heideman*, 63 AD3d 1105; *Landman v Sarcona*, 63 AD3d 690; *Alam v Karim*, 61 AD3d 904; *Liautaud v Joseph*, 59 AD3d 394).

RIVERA, J.P., FLORIO, DICKERSON, BELEN and ROMAN, 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