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

D26271
W/kmg

_____AD3d_____ Submitted - January 27, 2010

MARK C. DILLON, J.P.
HOWARD MILLER
RUTH C. BALKIN
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2009-00783 DECISION & ORDER

Justine Noh, et al., appellants,
v Regina M. Duffe, respondent.

(Index No. 9266/06)

Law Offices of Dennis A. Maycher, P.C., New York, N.Y. (Steven A. Hershkowitz of counsel), for appellants.

DeSena & Sweeney, LLP, Hauppauge, N.Y. (Shawn P. O'Shaughnessy of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Nassau County (McCarty, J.), entered November 21, 2008, which granted the defendant's motion for summary judgment dismissing the complaint on the ground that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d), and denied, as academic, their cross-motion for leave to file a note of issue.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiffs' contentions, the defendant established, prima facie, through the affirmed reports of her expert neurologist, orthopedist, and radiologist, as well as the plaintiffs' deposition testimony, that neither of the plaintiffs sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident (*see Richards v Tyson*, 64 AD3d 760; *Berson v Rosada Cab Corp.*, 62 AD3d 636; *Byrd v J.R.R. Limo*, 61 AD3d 801). The plaintiffs' submissions were insufficient to raise a triable issue of fact, as the plaintiffs' subjective complaints of

pain and limitation of motion were unsubstantiated by verified objective medical findings (*see Dantini v Cuffie*, 59 AD3d 490; *Villeda v Cassas*, 56 AD3d 762; *Ranzie v Abdul-Massih*, 28 AD3d 447; *Lagana v Shamsian*, 270 AD2d 313).

In light of our determination, it is unnecessary to address the plaintiffs' remaining contention.

DILLON, J.P., MILLER, BALKIN, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court