

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

D26442  
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Submitted - February 24, 2010

STEVEN W. FISHER, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
PLUMMER E. LOTT, JJ.

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2009-10923

DECISION & ORDER

Luis Medina, respondent, v Wan Hing Noodle, Inc.,  
et al., appellants, et al., defendants.

(Index No. 18335/06)

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Cheven, Kelly & Hatzis, New York, N.Y. (William B. Stock of counsel), for appellants.

Feder & Rodney, PLLC, Brooklyn, N.Y. (Adam B. Feder and Giselle L. Eras of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants Wan Hing Noodle, Inc., and Cheong Kam Ho appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated August 20, 2009, which denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 appellants failed to establish, prima facie, their entitlement to judgment as a matter of law. As the appellants failed to meet their prima facie burden, we need not consider the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

March 9, 2010

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Accordingly, the Supreme Court properly denied the appellants' motion for summary judgment dismissing the complaint insofar as asserted against them.

FISHER, J.P., SANTUCCI, ANGIOLILLO and LOTT, 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