

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

D26469  
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Submitted - January 6, 2010

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

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2009-02584

DECISION & ORDER

Martin Ambos, respondent, v New York City Transit Authority, et al., appellants.

(Index No. 28875/06)

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Wallace D. Gossett, Brooklyn, N.Y. (Anita Isola of counsel), for appellants.

Douglas & London, P.C. (Arnold E. DiJoseph, P.C., New York, N.Y. [Arnold E. DiJoseph III], 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 (Velasquez, J.), dated January 21, 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 established, prima facie, through the affirmed reports of their expert orthopedist, Dr. Barbara Freeman, and the plaintiff's deposition testimony, 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, 956-957; *Richards v Tyson*, 64 AD3d 760; *Berson v Rosada Cab Corp.*, 62 AD3d 636; *Byrd v J.R.R. Limo*, 61 AD3d 801). The plaintiff failed to submit any objective medical evidence sufficient to raise a triable issue of fact (*see LaMarre v Michelle Taxi, Inc.*, 60 AD3d 911; *Fiorillo v Arriaza*, 52 AD3d 465; *Piperis v Wan*, 49 AD3d 840; *Young Hwan Park v Orellana*, 49 AD3d 721). In the absence

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of such evidence, the plaintiff's subjective complaints of pain were insufficient to establish a serious injury (see *Dantini v Cuffie*, 59 AD3d 490; *Villeda v Casas*, 56 AD3d 762; *Ranzie v Abdul-Massih*, 28 AD3d 447).

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