

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

D26664
O/kmg

_____AD3d_____

Submitted - March 10, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2009-02829

DECISION & ORDER

Marienella E. Buntin, appellant, v Luckson Rene,
et al., respondents (and a related action).

(Index No. 11767/07)

Elliot Iffraimoff & Associates, P.C. (Arnold E. DiJoseph, P.C., New York, N.Y. [Cory E. Skolnick-Haber], of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondent Luckson Rene.

Picciano & Scahill, P.C., Westbury, N.Y. (Francis J. Scahill and Gilbert J. Hardy of counsel), for respondents K. Vasiliades and Helen Sierra.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Agate, J.), entered February 3, 2009, as, upon renewal, adhered to an original determination in an order entered July 24, 2008, granting the respective motions of the defendant Luckson Rene, and the defendants K. Vasiliades and Helen Sierra, which were 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 insofar as appealed from, with one bill of costs payable to the defendants appearing separately and filing separate briefs.

March 23, 2010

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The Supreme Court, upon renewal, properly adhered to its original determination granting the respective motions of the defendant Luckson Rene, and the defendants K. Vasiliades and Helen Sierra, which were 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). The medical report of Dr. Hamid I. Lalani submitted in support of the plaintiff's motion for leave to renew, which contained the plaintiff's range of motion findings shortly after the subject accident, failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557). The Supreme Court correctly determined that the report was not affirmed, and certification did not cure this defect (*see CPLR 2106; see also Washington v Mendoza*, 57 AD3d 972; *Matter of Bronstein-Becher v Becher*, 25 AD3d 796, 797). Dr. Lalani's other reports, as well as the reports of STZ Chiropractic, P.C., and Ming Hua Acupuncture, P.C., submitted on the motion for leave to renew, also were unaffirmed.

RIVERA, J.P., FLORIO, MILLER, CHAMBERS and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court