

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

D27850
C/kmg

_____AD3d_____

Submitted - June 2, 2010

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-10207

DECISION & ORDER

Jenny Lopez, respondent, v Helen Glover, defendant,
J. Rodriguez-Rosario, appellant.

(Index No. 35019/07)

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

Block, O'Toole & Murphy LLP, New York, N.Y. (Kareem R. Vessup of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant J. Rodriguez-Rosario appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Balter, J.), dated September 1, 2009, as denied his motion for summary judgment dismissing the complaint insofar as asserted against him 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 costs.

The Supreme Court properly determined that the appellant met his prima facie burden of 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). However, in opposition, the plaintiff raised triable issues of fact.

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Accordingly, the Supreme Court properly denied the appellant's motion.

COVELLO, J.P., ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court