

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

D28387
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_____AD3d_____

Submitted - September 8, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2009-09947

DECISION & ORDER

Malta Ortiz, appellant, v Andrei Orlov, et al.,
respondents.

(Index No. 37417/07)

Annette G. Hasapidis, South Salem, N.Y., for appellant.

Morris Duffy Alonso & Faley, New York, N.Y. (Anna J. Ervolina of counsel), for
respondents Elvin Elias, Sean Portillo, and Danis D. Saenz.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (F. Rivera, J.), entered August 17, 2009, which granted the motion of the defendant Andrei Orlov, and the separate motion of the defendants Elvin Elias Sean Portillo and Danis D. Saenz, for summary judgment dismissing the complaint insofar as asserted against them on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is reversed, on the law, with one bill of costs payable by the respondents, and the motion of the defendant Andrei Orlov, and the separate motion of the defendants Elvin Elias Sean Portillo and Danis D. Saenz, for summary judgment dismissing the complaint insofar as asserted against them are denied.

The defendants, all of whom relied on the same submissions in support of their respective motions, failed to meet their prima facie burdens 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 NY 345; *Gaddy v Eyler*, 79 NY2d 955, 956-957). In support of their motions, they relied upon, inter alia, the medical reports of the plaintiff's treating

September 21, 2010

Page 1.

ORTIZ v ORLOV

physicians. At least two of those reports revealed that the plaintiff had significant limitations in her cervical and lumbar spine range of motion more than seven months post-accident (*see Guerrero v Bernstein*, 57 AD3d 845; *Mendola v Demetres*, 212 AD2d 515).

Since the defendants did not meet their prima facie burdens, it is unnecessary to decide whether the papers submitted by the plaintiff in opposition were sufficient to raise a triable issue of fact (*see Guerrero v Bernstein*, 57 AD3d at 845; *Coscia v 938 Trading Corp.*, 283 AD2d 538).

DILLON, J.P., BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court