

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

D28683  
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Submitted - October 6, 2010

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

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2010-01406

DECISION & ORDER

Jonathan Zawaski, respondent, v Louis Salzano,  
appellant.

(Index No. 23277/07)

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Richard T. Lau, Jericho, N.Y. (Keith E. Ford of counsel), for appellant.

Johannesen & Johannesen, PLLC, Rocky Point, N.Y. (Annmarie R. Johannesen of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Suffolk County (Costello, J.), dated January 14, 2010, which granted the plaintiff's motion for summary judgment on the issue of liability, and denied his cross 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, the defendant's cross 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) is granted, and the plaintiff's motion for summary judgment on the issue of liability is denied as academic.

In support of his cross motion, the defendant 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 Eycler*, 79

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NY2d 955, 956-957; *see also Kearsse v New York City Tr. Auth.*, 16 AD3d 45, 49-50). In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff failed to submit any affirmations or affidavits of his treating physicians, or medical records in admissible form indicating what treatment, if any, he received for his alleged injuries (*see Kivelowitz v Calia*, 43 AD3d 1111).

Since the plaintiff failed to raise a triable issue of fact in opposition, the Supreme Court should have granted the defendant's cross motion for summary judgment dismissing the complaint. Accordingly, the plaintiff's motion for summary judgment on the issue of liability should have been denied as academic (*see Kuperberg v Montalbano*, 72 AD3d 903).

SKELOS, J.P., SANTUCCI, ANGIOLILLO, HALL and ROMAN, 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