

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

D29067  
G/kmb

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Submitted - November 3, 2010

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

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2010-05665

DECISION & ORDER

Yves Torchon, respondent, v Kazeem Oyezole,  
et al., appellants.

(Index No. 20083/08)

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

Ferro, Kuba, Mangano, Sklyar, P.C., New York, N.Y. (Kenneth E. Mangano and Michael N. Manolakis of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Knipel, J.), dated April 16, 2010, as 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 insofar as appealed from, 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 and radiologist, as well as 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 Eyler*, 79 NY2d 955, 956-957). The plaintiff's submissions in opposition to the defendants' motion were insufficient to raise a triable issue of fact. The plaintiff failed to proffer competent objective medical evidence that was contemporaneous with the subject accident which revealed the existence of a significant limitation in his right knee (*see Delarosa v McLedo*, 74 AD3d 1012; *Ferraro v Ridge Car Serv.*, 49 AD3d 498;

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*Vickers v Francis*, 63 AD3d 1150; *Sorto v Morales*, 55 AD3d 718). Accordingly, the defendants were entitled to summary judgment dismissing the complaint.

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court