

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

D29493
W/hu/kmb

_____AD3d_____

Submitted - December 8, 2010

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

2010-08157

DECISION & ORDER

Bo Ran Han, plaintiff, Young H. Ma, respondent, v
Abderrahem Tabet, et al., appellants.

(Index No. 912/09)

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

Sim & Park, LLP, New York, N.Y. (Sang J. Sim 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, Queens County (Nelson, J.), entered July 20, 2010, as denied those branches of their motion which were for summary judgment dismissing the complaint insofar as asserted by the plaintiff Young H. Ma to the extent that it alleged that he sustained a serious injury within the meaning of Insurance Law § 5102(d) under the categories of permanent loss of use of a body organ, member, function, or system, a permanent consequential limitation of use of a body organ or member, and a significant limitation of use of a body function or system.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the Supreme Court's holding, the defendants met their prima facie burden of establishing that the plaintiff Young H. Ma did not sustain a serious injury within the meaning of Insurance Law § 5102(d) by virtue of his having sustained a permanent loss of use of a body organ, member, function, or system, a permanent consequential limitation of use of a body organ or member, or a significant limitation of use of a body function or system (*see Toure v Avis Rent A Car*

April 12, 2011

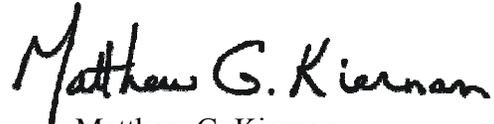
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Sys., 98 NY2d 345; *Gaddy v Eyer*, 79 NY2d 955, 956-957). Nevertheless, the order must be affirmed insofar as appealed from because, in opposition, Ma raised a triable issue of fact (*see Toure v Avis Rent A Car Sys.*, 98 NY2d at 353).

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