

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

D30160
H/kmb

_____AD3d_____

Submitted - November 17, 2010

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-06217

DECISION & ORDER

Minsik Bae, respondent, v CPS Vallejo
Limousine, Inc., et al., appellants.

(Index No. 1384/09)

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

John I. Kim, Flushing, N.Y. (Richard C. Bell of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Hart, J.), dated May 24, 2010, which 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, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The defendants met their prima facie burden of showing that the plaintiff did not sustain a serious injury to his right shoulder 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; *see also Giraldo v Mandanici*, 24 AD3d 419). In opposition, the plaintiff failed to raise a triable issue of fact (*see Giraldo v Mandanici*, 24 AD3d 419).

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Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

MASTRO, J.P., FLORIO, DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court