

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

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Submitted - February 9, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-05700

DECISION & ORDER

Sari Zelman, respondent, v Marsha Mauro, et al.,
appellants.

(Index No. 7760/07)

Conway, Farrell, Curtin & Kelly, P.C., New York, N.Y. (Jonathan T. Uejio of counsel), for appellants.

Mirotnik & Associates, LLC, East Meadow, N.Y. (Mary Ellen O'Brien of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Nassau County (McCarty III, J.), entered May 14, 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 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 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact. Although the plaintiff was entitled to

rely upon the unsworn medical reports of her doctors that were submitted by the defendants in support of their motion for summary judgment (*see Kearse v New York City Transit Auth.*, 16 AD3d 45, 47 n 1), these reports were insufficient to raise a triable issue of fact.

RIVERA, J.P., FLORIO, DICKERSON, 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