

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

D30391
Y/kmb

_____AD3d_____

Submitted - December 8, 2010

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

2010-02231

DECISION & ORDER

Nicholas Soldano, respondent, City of New York
(Police Department), et al., defendants, Elsiddig Limo,
Inc., et al., appellants.
(Action No. 1)

Ruth Jones, et al., plaintiffs, v Elsiddig Limo, Inc., et
al., defendants.
(Action No. 2)

(Index Nos. 4586/07, 45748/07)

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

Kaplan Belsky Ross Bartel, LLP, Garden City, N.Y. (Lewis A. Bartell of counsel),
for respondent.

In related actions to recover damages for personal injuries, etc., the defendants
Elsiddig Limo, Inc., and Lemine Mohamed appeal, as limited by their brief, from so much of an order
of the Supreme Court, Kings County (Miller, J.), dated January 15, 2010, as denied their motion for
summary judgment dismissing the complaint in Action No. 1 insofar as asserted against them on the
ground that the plaintiff in that action, Nicholas Soldano, did not sustain a serious injury within the
meaning of Insurance Law § 5102(d).

March 8, 2011

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SOLDANO v CITY OF NEW YORK (POLICE DEPARTMENT)
JONES v ELSIDDIG LIMO, INC.

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

The Supreme Court properly concluded that the appellants failed to meet their prima facie burden of showing that the plaintiff in Action No. 1, Nicholas Soldano, 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). Since the appellants failed to meet their prima facie burden as movants, we need not review the sufficiency of the opposition papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court