

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

D30545
O/kmb

_____AD3d_____

Submitted - March 9, 2011

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

2010-09335

DECISION & ORDER

Seongho Choi, respondent, v Wilson R. Guerrero,
appellant.

(Index No. 107/08)

Mead, Hecht, Conklin & Gallagher, Mamaroneck, N.Y. (Baker, McEvoy, Morrissey & Moskovits, P.C. [Elizabeth M. Hecht], of counsel), for appellant.

Kerner & Kerner, New York, N.Y. (Kenneth T. Kerner of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Rosengarten, J.), entered July 26, 2010, as denied that branch of his motion which was for summary judgment dismissing the first cause of action 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 that branch of the defendant's motion which was for summary judgment dismissing the first cause of action is granted.

The defendant met his prima facie burden of demonstrating his entitlement to judgment as a matter of law dismissing the first cause of action by showing, through the affirmed reports of his medical experts, that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject motor vehicle accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957). In opposition to the defendant's motion, the plaintiff failed to raise a triable issue of fact (*see Srebnick v Quinn*, 75 AD3d 637). Accordingly, the

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Supreme Court should have granted that branch of the defendant's motion which was for summary judgment dismissing the first cause of action.

RIVERA, J.P., FLORIO, DICKERSON, HALL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court