

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

D30550  
C/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 9, 2011

WILLIAM F. MASTRO, J.P.  
DANIEL D. ANGIOLILLO  
RUTH C. BALKIN  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2010-09201

DECISION & ORDER

Gordon Joris, et al., respondents, v UMF Car & Limo Service, et al., appellants, et al., defendant.

(Index No. 18730/08)

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Mead, Hecht, Conklin & Gallagher, LLP, Mamaroneck, N.Y. (Elizabeth M. Hecht and Baker, McEvoy, Morrissey & Moskovits, P.C., of counsel), for appellants.

G. Wesley Simpson, P.C., Brooklyn, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants UMF Car & Limo Service and Valeri Gorelov appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (F. Rivera, J.), dated August 20, 2010, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 affirmed insofar as appealed from, with costs.

The appellants failed to meet 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 Eyler*, 79 NY2d 955, 956-957).

Since the appellants did not sustain their prima facie burden, it is unnecessary to determine whether the papers submitted by the plaintiffs in opposition were sufficient to raise a triable issue of fact (*see Linton v Nawaz*, 14 NY3d 821, 822; *Bright v Moussa*, 72 AD3d 859, 860; *Menezes*

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JORIS v UMF CAR & LIMO SERVICE

*v Khan*, 67 AD3d 654, 654-655).

MASTRO, J.P., ANGIOLILLO, BALKIN, LOTT and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan  
Clerk of the Court