

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

D30553
C/nl

_____AD3d_____

Submitted - February 23, 2011

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

2010-03440

DECISION & ORDER

Mohammed Al-Khilewi, appellant, v Tyron R. Turman,
respondent.

(Index No. 104249/07)

Law Offices of Alvin M. Bernstone, LLP, New York, N.Y. (Matthew A. Schroeder of counsel), for appellant.

Morris Duffy Alonso & Faley, New York, N.Y. (Iryna S. Krauchanka and Andrea M. Alonso of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Richmond County (Fusco, J.), dated March 17, 2010, which denied his cross motion for leave to amend the bill of particulars and granted the defendant's 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 affirmed, with costs.

The Supreme Court providently exercised its discretion in denying the plaintiff's cross motion for leave to amend the bill of particulars. The amendment added a claim of exacerbation of preexisting disc herniations, and would require the defendant to reorient his defense strategy (*see Barrera v City of New York*, 265 AD2d 516, 518; *Markarian v Hundert*, 262 AD2d 369, 370). Moreover, the plaintiff failed to offer a reasonable excuse for his delay in seeking to amend the bill of particulars until over two years after the accident and after the note of issue was filed (*see Barrera*

March 22, 2011

AL-KHILEWI v TURMAN

Page 1.

v City of New York, 265 AD2d at 518; *Orros v Yick Ming Yip Realty*, 258 AD2d 387; *Kyong Hi Wohn v County of Suffolk*, 237 AD2d 412).

The defendant established, prima facie, 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, 352; *Gaddy v Eycler*, 79 NY2d 955, 956-957). In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

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