

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

D30747
O/prt

_____AD3d_____

Submitted - March 23, 2011

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

2010-07807

DECISION & ORDER

Bridget D'Orsa, appellant, v
Tina M. Bryan, respondent.

(Index No. 9541/08)

Thomas P. Cleere, Ft. Salonga, N.Y., for appellant.

Martyn, Toher & Martyn, Mineola, N.Y. (Christine J. Hill of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Agate, J.), dated May 24, 2010, which 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 correctly determined that the defendant met her 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). In opposition, the plaintiff failed to raise a triable issue of fact.

The reports of the plaintiff's treating neurologist, Dr. Lewis A. Levy, and the report of the plaintiff's treating orthopedic surgeon, Dr. Robert Y. Garroway, as well as the plaintiff's hospital records, magnetic resonance imaging reports, and EMG/NCS reports, all were unaffirmed

April 5, 2011

D'ORSA v BRYAN

Page 1.

or uncertified, and thus, failed to raise a triable issue of fact (*see Grasso v Angerami*, 79 NY2d 813, 814; *Rush v Kwan Chiu*, 79 AD3d 1004, 1004; *Bernier v Torres*, 79 AD3d 776, 776; *Zawaski v Salzano*, 77 AD3d 823, 824; *Vasquez v John Doe #1*, 73 AD3d 1033, 1033; *Lozuskos v Miller*, 72 AD3d 908, 908).

The affirmation of Dr. Levy also failed to raise a triable issue of fact because it did not contain any medical findings contemporaneous with the subject accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d at 350-351; *Rush v Kwan Chiu*, 79 AD3d at 1005; *Posa v Guerrero*, 77 AD3d 898, 899).

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