

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

D32034
H/prt

_____AD3d_____

Submitted - June 22, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2010-08424

DECISION & ORDER

Yves Frederique, appellant, v Debra M. Krapf,
et al., respondents.

(Index No. 9433/08)

Harmon, Linder & Rogowsky, New York, N.Y. (Mitchell Dranow of counsel), for appellant.

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Mahon, J.), entered August 11, 2010, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

ORDERED that the order is affirmed, with costs.

The defendants met their prima facie burden of establishing 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 Eycler*, 79 NY2d 955, 956-957). The plaintiff alleged that, as a result of the subject accident, he sustained certain injuries to his left hip, the cervical and lumbosacral regions of his spine, and his left knee. However, the defendants provided competent medical evidence establishing, prima facie, that none of those alleged injuries

July 5, 2011

Page 1.

FREDERIQUE v KRAPF

constituted a serious injury under the permanent consequential or significant limitation of use categories within the meaning of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614; *Rodriguez v Huerfano*, 46 AD3d 794, 795). Furthermore, while the plaintiff also alleged that he sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d), the defendants provided evidence establishing, prima facie, that during the 180-day period immediately following the subject accident, he did not have an injury or impairment which, for more than 90 days, prevented him from performing substantially all of the acts that constituted his usual and customary daily activities (*cf. Ingram v Doe*, 296 AD2d 530, 531). In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., COVELLO, BALKIN, LOTT 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