

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

D32172  
Y/prt

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

Submitted - June 22, 2011

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
SANDRA L. SGROI, JJ.

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2010-06425

DECISION & ORDER

Stacey Chery, appellant, v Kevaghn Castello, et al.,  
defendants, Ronnie Thornton, respondent.

(Index No. 23495/07)

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

Mendolia & Stenz, Westbury, N.Y. (Tracy Morgan of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Grays, J.), dated May 20, 2010, as denied that branch of her motion which was to vacate so much of a prior order of the same court dated October 29, 2009, as granted the unopposed motion of the defendant Ronnie Thornton for summary judgment dismissing the complaint insofar as asserted against her on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) and, thereupon, to deny that motion.

ORDERED that the order is reversed insofar as appealed from, on the law and in the exercise of discretion, with costs, that branch of the plaintiff's motion which was to vacate so much of the order dated October 29, 2009, as granted the motion of the defendant Ronnie Thornton for summary judgment dismissing the complaint insofar as asserted against her and, thereupon, to deny that motion, is granted, so much of that order as granted that motion is vacated, and that motion is denied.

August 2, 2011

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The plaintiff demonstrated a reasonable excuse for her failure to oppose the motion of the defendant Ronnie Thornton for summary judgment dismissing the complaint insofar as asserted against her (*see* CPLR 5015[a][1]; *Political Mktg., Int'l., Inc. v Jaliman*, 67 AD3d 661; *cf. Felder v New York City Tr. Auth.*, 238 AD2d 543; *Krystofic v Rapisardi*, 112 AD2d 196, 196-197). The plaintiff also “established the existence of a triable issue of fact constituting a meritorious opposition to” Thornton’s motion (*Political Mktg., Int'l., Inc. v Jaliman*, 67 AD3d at 662; *see* CPLR 5015[a][1]). The plaintiff provided competent medical evidence establishing that the alleged injuries to the lumbar region of her spine constituted a serious injury under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094, 1094-1095). She also provided a reasonable explanation for a cessation of medical treatment (*see Pommells v Perez*, 4 NY3d 566, 574; *Abdelaziz v Fazel*, 78 AD3d 1086).

Accordingly, the Supreme Court should have granted that branch of the plaintiff’s motion which was to vacate so much of the order dated October 29, 2009, as granted Thornton’s motion for summary judgment, should have vacated so much of that order as granted Thornton’s motion for summary judgment, and thereupon should have denied Thornton’s motion (*see Political Mktg., Int'l., Inc. v Jaliman*, 67 AD3d at 661).

RIVERA, J.P., ANGIOLILLO, ENG, CHAMBERS and SGROI, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court