

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

D32291
W/kmb

_____AD3d_____

Submitted - September 7, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-01074

DECISION & ORDER

Jessica Bonilla, respondent, v Benjamin Locicero, Jr.,
et al., appellants.

(Index No. 36698/08)

Richard T. Lau, Jericho, N.Y. (Linda Meisler of counsel), for appellants.

Siben & Siben, LLP, Bay Shore, N.Y. (Alan G. Faber of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated December 2, 2010, which denied their 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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

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 Eyler*, 79 NY2d 955, 956-957). The plaintiff alleged that, as a result of the subject accident, she sustained certain injuries to the cervical and thoracolumbar regions of her spine, and her left hip. However, the defendants submitted competent medical evidence establishing, prima facie, that none of those alleged injuries constituted a serious injury 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 she

sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d), the defendants submitted evidence establishing, prima facie, that during the 180-day period immediately following the subject accident, the plaintiff did not have an injury or impairment which, for more than 90 days, prevented her from performing substantially all of the acts that constituted her usual and customary daily activities (*cf. Kin Chong Ku v Baldwin-Bell*, 61 AD3d 938, 939).

In opposition, the plaintiff failed to provide a reasonable explanation for a cessation of her medical treatment (*see Pommells v Perez*, 4 NY3d 566, 574) and failed to raise a triable issue of fact. Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court