

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

D32295
G/kmb

_____AD3d_____

Submitted - September 7, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-06944

DECISION & ORDER

Alexer Munoz, appellant, v Jimmie Irizarri, et al.,
respondents.

(Index No. 14521/08)

Mallow, Konstam & Nisonoff, P.C., New York, N.Y. (Mirra Khavulya of counsel),
for appellant.

Wallace D. Gossett, Brooklyn, N.Y. (Michael Rabinowitz of counsel), for
respondents Jimmie Irizarri and New York City Transit Authority.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Velasquez, J.), dated June 3, 2010, which granted the separate motions of the defendants Jimmie Irizarri and New York City Transit Authority, and the defendants Josephine Pantano and Nunzio Pantano, for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that she 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' motions for summary judgment are denied.

The defendants met their prima facie burdens 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, inter alia, that she sustained certain injuries to the cervical and lumbosacral regions of her spine as a result of the subject accident. The defendants provided, inter alia, competent

medical evidence establishing, prima facie, that those alleged injuries did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

However, in opposition, the plaintiff provided competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical and lumbosacral regions of her spine constituted serious injuries within the meaning of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094, 1094-1095). Accordingly, the Supreme Court should have denied the defendants' motions for summary judgment.

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, 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