

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

D32301
C/prt

_____AD3d_____

Submitted - September 7, 2011

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2011-03381

DECISION & ORDER

Atli Vejselovski, et al., respondents, v
Robert J. McErlean, appellant.

(Index No. 100297/10)

Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for appellant.

Raymond J. Pezzoli, Staten Island, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Richmond County (McMahon, J.), dated March 15, 2011, which denied his motion for summary judgment dismissing the complaint on the ground that the plaintiff Atli Vejselovski 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 defendant's motion for summary judgment dismissing the complaint is granted.

The defendant met his prima facie burden of showing that the plaintiff Atli Vejselovski (hereinafter the injured 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 plaintiffs alleged that certain regions of the injured plaintiff's spine, as well as the injured plaintiff's left shoulder, sustained certain injuries as a result of the subject accident, and the defendant provided 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).

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In opposition, the plaintiffs failed to raise a triable issue of fact (*see Casas v Montero*, 48 AD3d 728, 728-729; *Guzman v Bowen*, 46 AD3d 617; *Rameau v King*, 245 AD2d 557). The affirmed report the plaintiffs submitted from the insured plaintiff's treating chiropractor was without probative value, since a chiropractor may not affirm the contents of a report pursuant to CPLR 2106 (*see Casas v Montero*, 48 AD3d at 728-729; *Guzman v Bowen*, 46 AD3d 617; *Kunz v Gleeson*, 9 AD3d 480). Accordingly, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint.

SKELOS, J.P., ANGIOLILLO, 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