

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

D32304
C/kmb

_____AD3d_____

Submitted - September 7, 2011

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

2010-07063

DECISION & ORDER

Yuriy Khaimov, appellant, v Jing Fan, respondent.

(Index No. 2632/09)

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

Robert P. Tusa, Garden City, N.Y. (Lewis Johs Avallone Aviles, LLP [Seth M. Weinberg], of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Lane, J.), dated June 14, 2010, which granted the defendant's 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).

ORDERED that the order is reversed, on the law, with costs, and the defendant's 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) is denied.

The defendant met his 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, inter alia, that the cervical region of his spine sustained certain injuries as a result of the subject accident. The defendant provided, inter alia, competent medical evidence establishing, prima facie, that those alleged injuries did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

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However, in opposition, the plaintiff provided competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical region of his spine constituted a serious injury within the meaning of Insurance Law § 5102(d) (*see Dixon v Fuller*, 79 AD3d 1094, 1094-1095). He also provided a reasonable explanation for a cessation of his medical treatment (*see Pommells v Perez*, 4 NY3d 566, 574; *Abdelaziz v Fazel*, 78 AD3d 1086). Accordingly, the Supreme Court should have denied the defendant's 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