

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

D32607
O/kmb

_____AD3d_____

Submitted - October 5, 2011

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

2011-01265

DECISION & ORDER

John Bamundo, appellant, v Donald Fiero, et al.,
respondents.

(Index No. 11814/09)

Lite & Russell, West Islip, N.Y. (Justin N. Lite of counsel), for appellant.

Richard T. Lau, Jericho, N.Y. (Kathleen E. Fioretti of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Spinner, J.), dated December 16, 2010, which granted the defendants' 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 affirmed, with costs.

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 defendants made a prima facie showing, through the affirmed report of their examining orthopedist, that the injuries the plaintiff allegedly sustained to his left knee did not constitute a serious injury under the permanent consequential limitation of use and/or the significant limitation of use categories of Insurance Law § 5102(d) (*see Dunbar v Prahovo Taxi, Inc.*, 84 AD3d 862, 863; *Staff v Yshua*, 59 AD3d 614). The defendants also demonstrated, prima facie, that the plaintiff did not sustain a serious injury under the 90/180 day category of Insurance Law § 5102(d) by submitting

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the plaintiff's deposition testimony, which revealed that he missed only 7 days of work in the first 180 days following the subject accident (*see Lewars v Transit Facility Mgt. Corp.*, 84 AD3d 1176, 1178).

In opposition, the plaintiff failed to raise a triable issue of fact. Although the plaintiff's submissions indicated that he sustained a torn meniscus in his left knee, evidence of a torn meniscus is insufficient to raise a triable issue of fact under the permanent consequential limitation of use and the significant limitation of use categories of Insurance Law § 5102(d) absent objective proof of the extent and duration of the alleged physical limitations resulting from the injury (*see Dunbar v Prahovo Taxi, Inc.*, 84 AD3d at 863; *McLoud v Reyes*, 82 AD3d 848, 849; *Simanovskiy v Barbaro*, 72 AD3d 930, 932). Further, in view of the plaintiff's deposition testimony that he missed only 7 days of work as a result of the subject accident, he failed to raise a triable issue of fact under the 90/180 day category of Insurance Law § 5102(d) (*see Lewars v Transit Facility Mgt. Corp.*, 84 AD3d at 1178). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court