

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

D32753
N/nl

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Submitted - October 5, 2011

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2011-03367

DECISION & ORDER

Barbara F. Johnson, respondent, v Sarwar Hacking Corp., et al., appellants.

(Index No. 20704/09)

Baker, McEvoy, Morrissey & Moskovits, P.C. (The Sullivan Law Firm, New York, N.Y. [Timothy M. Sullivan and James A. Domini], of counsel), for appellants.

Edward Vilinsky, Brooklyn, N.Y. (Jeffrey Stern of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (F. Rivera, J.), dated March 4, 2011, 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 affirmed, with costs.

The defendants failed to meet their prima facie burden of showing 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 papers submitted by the defendants failed to adequately address the plaintiff's claim, set forth in the bill of particulars, that the plaintiff sustained a medically-determined injury or impairment of a nonpermanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than 90 days during the 180 days immediately following the subject accident (*see Reynolds v Wai Sang Leung*, 78 AD3d 919, 920).

November 1, 2011

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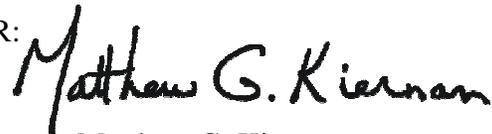
JOHNSON v SARWAR HACKING CORP.

Since the defendants did not sustain their prima facie burden, it is unnecessary to determine whether the papers submitted by the plaintiff in opposition were sufficient to raise a triable issue of fact (*id.*).

Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint.

MASTRO, J.P., DILLON, BALKIN and SGROI, 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