

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

D32996
Y/ct

_____AD3d_____

Submitted - November 9, 2011

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

2011-03755

DECISION & ORDER

Anthony Cairo, respondent, v Muhammad A. Awan,
et al., appellants, et al., defendants.

(Index No. 8104/09)

Marjorie E. Bornes, New York, N.Y., for appellants.

Salenger, Sack, Kimmel & Bavaro, LLP, Woodbury, N.Y. (Daniel Justus Solinsky
of counsel), and Bragoli & Associates, P.C., Melville, N.Y., for respondent (one brief
filed).

In an action to recover damages for personal injuries, the defendants Muhammad A. Awan and Charles Lindenbaum appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Solomon, J.), dated February 3, 2011, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them 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 insofar as appealed from, with costs.

The appellants met 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 Eycler*, 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 appellants established, prima facie, inter alia, that those alleged

November 22, 2011

Page 1.

CAIRO v AWAN

injuries were not caused by the subject accident (*see Pommells v Perez*, 4 NY3d 566, 579; *Jilani v Palmer*, 83 AD3d 786, 787).

In opposition to the appellants' motion the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical region of his spine were caused by the accident (*see Jaramillo v Lobo*, 32 AD3d 417). Accordingly, the Supreme Court properly denied the appellants' motion for summary judgment dismissing the complaint insofar as asserted against them.

DILLON, J.P., DICKERSON, LEVENTHAL, AUSTIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court