

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

D33027
Y/ct

_____AD3d_____

Submitted - November 9, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2010-10579

DECISION & ORDER

Mattie Grant, appellant, v New York City Transit Authority, et al., respondents.

(Index No. 13672/08)

Sacco & Fillas, LLP, Whitestone, N.Y. (Lamont K. Rodgers of counsel), for appellant.

Wallace D. Gossett, Brooklyn, N.Y. (Jane Shuffer of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Sherman, J.), dated September 13, 2010, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants demonstrated their prima facie entitlement to judgment as a matter of law by submitting competent medical evidence which established that the injuries sustained by the plaintiff did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Klvelowitz v Calia*, 43 AD3d 1111). In opposition, the plaintiff failed to raise a triable issue of fact either through her medical submissions or via her deposition testimony. The plaintiff testified at her deposition that while her injuries from the accident prevented her from performing some normal activities, they did not prevent her from performing substantially all of her daily activities for not less than 90 days out the first 180 days immediately following the accident (*see Pacheco v Connors*, 69

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AD3d 818; *Farozes v Kamran*, 22 AD3d 458; *see also Dembele v Cambisaca*, 59 AD3d 352).

Accordingly, the Supreme Court properly granted the defendants' 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).

MASTRO, J.P., BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court