

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

D33663
G/ct

_____AD3d_____

Submitted - January 4, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-08125

DECISION & ORDER

Bernard Nichols, respondent, v Thiruvinayagan
Thuraijasingam, defendant, Grant Mazzon, Jr.,
appellant.

(Index No. 11209/10)

Wollerstein & Futoran (Mitchell Dranow, Sea Cliff, N.Y., of counsel), for appellant.

Baron Associates, P.C., Brooklyn, N.Y. (Daniel Davidovic of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendant Grant Mazzon, Jr., appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated July 14, 2011, which denied his motion for summary judgment dismissing the complaint insofar as asserted against him 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 appellant met his 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 plaintiff alleged, inter alia, that as a result of the subject accident, the lumbar region of his spine sustained certain injuries. The appellant submitted evidence establishing, prima facie, that the alleged injuries to the region did not constitute a serious injury within the meaning of Insurance Law

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§ 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

However, in opposition, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the lumbar region of his spine constituted a serious injury under the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (*see Perl v Meher*, ___ NY3d ___, 2011 NY Slip Op 08452, * 4-5 [2011]). Accordingly, the Supreme Court properly denied the appellant's motion for summary judgment dismissing the complaint insofar as asserted against him.

RIVERA, J.P., ENG, CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court