

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

D33881
Y/kmb

_____AD3d_____

Submitted - January 18, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2011-07510

DECISION & ORDER

Adelis Torres, respondent, v Marilyn S. Posy, etc.,
et al., appellants.

(Index No. 24903/09)

Rivkin Radler, LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, Harris
J. Zakarin, and Melissa M. Murphy of counsel), for appellants.

Gary J. Mandel, Far Rockaway, N.Y. (Shawn J. Wallach of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Queens County (Pineda-Kirwan, J.), dated May 13, 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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

The defendants 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 Eyler*, 79 NY2d 955, 956-957). Although the plaintiff alleged that she sustained certain injuries to her right knee as a result of the subject accident, the defendants submitted competent medical evidence establishing, prima facie, that those alleged injuries did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614), and, in any event, were not caused by the subject accident (*see Jilani v Palmer*, 83 AD3d 786, 787). In addition, although the plaintiff alleged that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) as a result of

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the subject accident, the defendants submitted evidence establishing, prima facie, that she did not sustain such an injury (*see McIntosh v O'Brien*, 69 AD3d 585, 587).

In opposition, the plaintiff, who failed to adequately explain a cessation of her medical treatment (*see Pommells v Perez*, 4 NY3d 566, 574; *Vasquez v John Doe #1*, 73 AD3d 1033, 1034), failed to raise a triable issue of fact (*see Pommells v Perez*, 4 NY3d at 579). Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

DILLON, J.P., BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court