

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

D33982
O/kmb

_____AD3d_____

Submitted - February 1, 2012

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

2011-06882

DECISION & ORDER

Jennifer Moise, respondent, v U.S. Royal Transit, Inc.,
et al., appellants, et al., defendants.

(Index No. 30764/07)

Marjorie E. Bornes, New York, N.Y., for appellants U.S. Royal Transit, Inc., and Erron L.S. Alexander, and Glenn R. Schwartz, Westbury, N.Y., for appellant Richard M. Thomas (one brief filed).

Larock & Perez, New York, N.Y. (Mitchell Dranow of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants U.S. Royal Transit, Inc., and Erron L.S. Alexander appeal, and the defendant Richard M. Thomas separately appeals, as limited by the joint brief, from so much of an order of the Supreme Court, Kings County (Vaughan, J.), dated June 1, 2011, as denied their separate motions for summary judgment dismissing the complaint insofar as asserted against each of 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 one bill of 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 Eyler*, 79 NY2d 955, 956-957). The plaintiff alleged, inter alia, that as a result of the subject accident, the cervical and lumbar regions of her spine sustained certain injuries. The appellants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the regions did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

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In opposition, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to the cervical and lumbar regions of her spine constituted serious injuries within the meaning of Insurance Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 217). Accordingly, the Supreme Court properly denied the appellants' motions for summary judgment dismissing the complaint insofar as asserted against each of them.

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

ENTER:


Aprilanne Agostino
Clerk of the Court