

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

D33990
W/kmb

_____AD3d_____

Submitted - February 1, 2012

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2011-02135

DECISION & ORDER

Kyung Kook Chang, appellant, v Robert D. Carpenter,
et al., respondents.

(Index No. 22023/08)

Sim & Park, LLP, New York, N.Y. (Sang J. Sim of counsel), for appellant.

Paganini, Cioci, Pinter, Cusumano & Farole (Gannon, Lawrence & Rosenfarb, New
York, N.Y. [Lisa L. Gokhulsingh], of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Nassau County (Brandveen, J.), entered January 24, 2011, which granted the defendants' motion for summary judgment dismissing the complaint on the ground, inter alia, that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

While we affirm the order appealed from, we do so on a ground other than that relied upon by the Supreme Court.

Contrary to the conclusion of the Supreme Court, the plaintiff, in opposing the defendants' motion for summary judgment dismissing the complaint, was not required to raise a triable issue of fact as to whether the alleged injuries to his left shoulder and right knee were caused by the subject accident, since the defendants failed to establish, prima facie, that those alleged injuries were not caused by the subject accident (*see Jean-Baptiste v Tobias*, 88 AD3d 962, 963; *Messiana v Drivas*, 85 AD3d 744; *Hightower v Ghio*, 82 AD3d 934, 935).

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Nonetheless, 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 Eyley*, 79 NY2d 955, 956-957). The plaintiff alleged, inter alia, that as a result of the subject accident, he sustained certain injuries to his left shoulder and right knee. The defendants submitted competent medical evidence establishing, prima facie, that those alleged injuries did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614). In opposition to the motion, the plaintiff failed to raise a triable issue of fact as to whether those alleged injuries constituted serious injuries within the meaning of Insurance Law § 5102(d).

Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and LOTT, 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