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

D33998
C/kmb

_____AD3d_____ Submitted - February 1, 2012

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

2011-04716 DECISION & ORDER

Audra Torres, appellant, v Hakan Ozel, et al., respondents.

(Index No. 23973/09)

Krentsel & Guzman, LLP (Pollack, Pollack, Isaac & De Cicco, New York, N.Y. [Brian J. Isaac and Michael H. Zhu], of counsel), for appellant.

DeSena & Sweeney, LLP, Hauppauge, N.Y. (Shawn P. O'Shaughnessy of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Agate, J.), dated April 11, 2011, 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 reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is denied.

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). The plaintiff alleged, inter alia, that as a result of the subject accident, the cervical and thoracolumbar regions of her spine, and both of her shoulders, sustained certain injuries. The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the spine and shoulders did not constitute serious injuries within the meaning of Insurance Law § 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 cervical and thoracolumbar regions of her spine, and her shoulders, constituted serious injuries within the meaning of Insurance Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 217-218). Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

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

ENTER:

Aprilanne Agostino
Clerk of the Court