

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

D34637
O/ct

_____AD3d_____

Submitted - March 28, 2012

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

2011-09053

DECISION & ORDER

Wakela Jackson, respondent, v Rana Draz, et al.,
appellants.

(Index No. 31670/09)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Mead, Hecht, Conklin & Gallagher, LLP [Elizabeth Hecht], of counsel), for appellants.

Evan W. Kohn (Paris & Chaikin, PLLC, New York, N.Y. [Jason L. Paris], of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated July 19, 2011, as 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 affirmed insofar as appealed from, with costs.

The defendants failed to meet 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 defendants failed to adequately address the plaintiff's claim that she sustained a medically-determined injury or impairment of a nonpermanent nature which prevented her from performing substantially all of the material acts which constituted her usual and customary daily activities for not less than 90 days during the 180 days immediately following the subject accident

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(see *Aujour v Singh*, 90 AD3d 686, 686-687; *Bangar v Man Sing Wong*, 89 AD3d 1048, 1049).

Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint, without regard to the sufficiency of the papers submitted by the plaintiff in opposition (see *Aujour v Singh*, 90 AD3d at 687; *Bangar v Man Sing Wong*, 89 AD3d at 1049).

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