

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

D34648
H/nl

_____AD3d_____

Submitted - March 28, 2012

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

2011-03550

DECISION & ORDER

Jose C. Quintanilla, et al., plaintiffs, Sonia Martinez,
respondent, v William T. Campion, et al., appellants.

(Index No. 16787-09)

Russo, Apoznanski & Tambasco, Westbury, N.Y. (Susan J. Mitola of counsel), for
appellants.

Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Suffolk County (Pastorella, J.), dated March 16, 2011, which denied their motion for summary judgment dismissing the complaint insofar as asserted by the plaintiff Sonia Martinez on the ground that she did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants failed to meet their prima facie burden of showing that the plaintiff Sonia Martinez 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, 352; *Gaddy v Eyler*, 79 NY2d 955, 956-957). The defendants failed to adequately address the alleged injuries to Martinez's elbows and hips (*see Martinez v Yi Zhong Chen*, 91 AD3d 834, 835). Furthermore, the defendants failed to adequately address Martinez's claim that she sustained a serious injury under the 90/180-day category of Insurance Law § 5102(d) (*see Rouach v Betts*, 71 AD3d 977).

April 24, 2012

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Accordingly, the Supreme Court properly denied the defendants' motion for summary judgment dismissing the complaint insofar as asserted by Martinez, regardless of the sufficiency of Martinez's opposition papers (*see Martinez v Yi Zhong Chen*, 91 AD3d at 835; *Rouach v Betts*, 71 AD3d at 977-978).

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

ENTER:


Aprilanne Agostino
Clerk of the Court