

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

D34845
G/prt

_____AD3d_____

Submitted - April 11, 2012

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

2011-07436

DECISION & ORDER

Vashty Smith, appellant, v Thelma V. Trampe,
respondent.

(Index No. 13439/09)

Mark E. Weinberger, P.C., Rockville Centre, N.Y. (Marc J. Musman of counsel), for
appellant.

Bruno, Gerbino & Soriano, LLP, Melville, N.Y. (Mitchell L. Kaufman of counsel),
for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), entered June 10, 2011, as granted the defendant's 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) as a result of the subject accident.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is denied.

The defendant met her 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 879 955, 956-957). However, in opposition, the plaintiff submitted competent medical evidence raising a triable issue of fact as to whether the alleged injuries to her right shoulder constituted a serious injury under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance

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Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 215-218; *Livia v Atkins*, 93 AD3d 766). Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., ENG, CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court