

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

D35629
Y/kmb

_____AD3d_____

Argued - May 31, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-03095

DECISION & ORDER

James Tudy, et al., appellants, v Armando Sandoval,
respondent.

(Index No. 2377/09)

Mark A. Siesel (Stephen D. Chakwin, Jr., New York, N.Y., of counsel), for appellants.

Mead, Hecht, Conklin & Gallagher, LLP, White Plains, N.Y. (Sara Luca Salvi of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiffs appeal from an order of the Supreme Court, Westchester County (Murphy, J.), entered March 14, 2011, which granted the defendant's motion for summary judgment dismissing the complaint on the ground that neither of them sustained a serious injury within the meaning of Insurance Law § 5102(d) as a result of the subject accident.

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

The Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint on the ground that neither plaintiff sustained a serious injury within the meaning of Insurance Law § 5102(d). The medical reports of the defendant's own examining physicians contained evidence that both plaintiffs had significant range-of-motion limitations, and that these limitations were causally related to the subject accident. Accordingly, the defendant failed to establish his prima facie entitlement to judgment as a matter of law (*see Gaddy v Eyley*, 79 NY2d 955, 956-957; *Kasper v N&J Taxi, Inc.*, 60 AD3d 910; *Gibson-Wallace v*

July 18, 2012

TUDY v SANDOVAL

Page 1.

Dalessandro, 58 AD3d 679, 680).

Since the defendant failed to meet his prima facie burden, it is unnecessary to consider whether the plaintiffs' opposition papers were sufficient to raise a triable issue of fact (*see Coscia v 938 Trading Corp.*, 283 AD2d 538).

RIVERA, J.P., ENG, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court