

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

D36027
C/kmb

_____AD3d_____

Submitted - April 11, 2012

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

2011-09051

DECISION & ORDER

Christopher Beltran, respondent, v Powow Limo,
Inc., et al., appellants, et al., defendant.

(Index No. 4563/09)

Baker, McEvoy, Morrissey & Moskovitz, P.C., New York, N.Y. (Stacy R. Seldin of
counsel), for appellants.

Friedman & Moses, LLP, New York, N.Y. (I. Bryce Moses of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendants Powow Limo,
Inc., and Walter Alberto Svauijana appeal, as limited by their brief, from so much of an order of the
Supreme Court, Kings County (Schmidt, J.), dated July 28, 2011, as denied their motion for
summary judgment dismissing the complaint insofar as asserted against them 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 reversed insofar as appealed from, on the law, with costs
payable by the plaintiff, and the motion by the defendants Powow Limo, Inc., and Walter Alberto
Svauijana for summary judgment dismissing the complaint insofar as asserted against them is
granted.

In support of their motion for summary judgment dismissing the complaint insofar
as asserted against them, the defendants Powow Limo, Inc., and Walter Alberto Svauijana
(hereinafter together the moving defendants), met their prima facie burden of establishing 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 Eycler*, 79 NY2d
955, 956–957). The moving defendants made a prima facie showing, through the affirmed reports

of their examining neurologist and radiologist, that the injuries the plaintiff allegedly sustained to the cervical and lumbar regions of his spine did not constitute a serious injury under the permanent consequential limitation of use and/or the significant limitation of use categories of Insurance Law § 5102(d) and were not causally related to the subject accident (*see Bamundo v Fiero*, 88 AD3d 831; *Jilani v Palmer*, 83 AD3d 786; *Staff v Yshua*, 59 AD3d 614). The defendants also demonstrated, prima facie, that the plaintiff did not sustain a serious injury under the 90/180 day category of Insurance Law § 5102(d) by submitting the plaintiff's deposition testimony, which revealed that he did not miss any days from work in the first 180 days following the subject accident (*see Bamundo v Fiero*, 88 AD3d at 831; *McIntosh v O'Brien*, 69 AD3d 585, 587).

In opposition, the plaintiff failed to come forward with competent medical evidence refuting the lack of causal connection between the claimed injuries and the subject accident (*see Pommells v Perez*, 4 NY3d 566, 579-580). Moreover, the plaintiff failed to raise a triable issue of fact as to whether his injuries meet the serious injury threshold of Insurance Law § 5102(d) (*see Toure v Avis Rent A Car Sys.*, 98 NY2d at 350-351; *Bamundo v Fiero*, 88 AD3d 831; *Acosta v Alexandre*, 70 AD3d 735).

Accordingly, the Supreme Court should have granted the moving defendants' motion for summary judgment dismissing the complaint and, in effect, all cross claims insofar as asserted against them.

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

ENTER:


Aprilanne Agostino
Clerk of the Court