

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

D36054
G/kmb

_____AD3d_____

Submitted - September 5, 2012

RANDALL T. ENG, P.J.
PETER B. SKELOS
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2011-09797

DECISION & ORDER

In Young Sohn, appellant, v Neil B. Dusling,
respondent.

(Index No. 26654/09)

Sim & Park, LLP, New York, N.Y. (Marc Andrew Williams and Haesun Alexis Kim
of counsel), for appellant.

Mendolia & Stenz, Westbury, N.Y. (Beth Goldman of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Nahman, J.), entered October 5, 2011, which granted the defendant's 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) 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 defendant met his 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 Eycler*, 79 NY2d 955, 956-957). The defendant submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbosacral regions of the plaintiff's spine, and to the plaintiff's shoulders, did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795).

However, in opposition, the plaintiff submitted competent medical evidence raising

a triable issue of fact as to whether the alleged injuries to the cervical and lumbosacral regions of her spine, and to her shoulders, constituted serious injuries under the permanent consequential limitation of use and/or significant limitation of use categories of Insurance Law § 5102(d) (*see Perl v Meher*, 18 NY3d 208, 215-218; *Hightower v Ghio*, 82 AD3d 934, 935). Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint.

ENG, P.J., SKELOS, CHAMBERS and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court