

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

D36129
W/kmb

_____AD3d_____

Submitted - September 5, 2012

DANIEL D. ANGIOLILLO, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-04561

DECISION & ORDER

Carl Wunderlich, appellant, v Washim U. Bhuiyan,
et al., respondents.

(Index No. 14857/09)

Schlemmer & Maniatis, LLP, New York, N.Y. (Paul M. Schlemmer of counsel), for appellant.

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Stacy R. Seldin of counsel), for respondent Washim U. Bhuiyan.

Adams, Hanson, Rego, Carlin, Hughes, Kaplan & Fishbein, Lake Success, N.Y. (Judy Goodstein of counsel), for respondents Georgios A. Alexiou and Despina Efremidis.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Butler, J.), entered April 8, 2011, which granted the motion of the defendant Washim U. Bhuiyan, and the separate motion of the defendants Georgios A. Alexiou and Despina Efremidis, for summary judgment dismissing the complaint insofar as asserted against each of them on the ground that he 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 affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

The defendants met their prima facie burdens 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

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accident (*see Toure v Avis Rent A Car Sys.*, 98 NY2d 345; *Gaddy v Eycler*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the plaintiff's right knee did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614), including evidence establishing, prima facie, that the plaintiff did not sustain a serious injury under the 90/180 day category of Insurance Law § 5102(d) (*see Bamundo v Fiero*, 88 AD3d 831).

In opposition, the plaintiff failed to raise a triable issue of fact (*see Il Chung Lim v Chrabaszc*, 95 AD3d 950, 951; *McLoud v Reyes*, 82 AD3d 848, 849). Accordingly, the Supreme Court properly granted the defendants' separate motions for summary judgment.

ANGIOLILLO, J.P., BALKIN, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court