

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

D36190
G/ct

_____AD3d_____

Submitted - September 19, 2012

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

2011-11539

DECISION & ORDER

Dwayne Scott, appellant, v Jose A. Martinez, et al.,
respondents.

(Index No. 11634/09)

Ross and Hill, Brooklyn, N.Y. (James F. Ross of counsel), for appellant.

Richard T. Lau, Jericho, N.Y. (Gene W. Wiggins of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated October 5, 2011, which granted the defendants' motion for summary judgment dismissing the complaint 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 costs.

The defendants met their 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 Eyster*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the lumbosacral region of the plaintiff's spine did not constitute a serious injury within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795) and, in any event, were not caused by the subject accident (*see Jilani v Palmer*, 83 AD3d 786, 787). The defendants also submitted competent medical evidence establishing, prima facie, that the alleged injuries to the thoracic region of the plaintiff's spine were not caused by the subject accident (*id.* at 787).

October 24, 2012

Page 1.

SCOTT v MARTINEZ

In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment dismissing the complaint.

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

ENTER:


Aprilanne Agostino
Clerk of the Court