

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

D36251
G/kmb

_____AD3d_____

Submitted - October 3, 2012

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

2011-10748

DECISION & ORDER

Nathalie Patterson, appellant, v Sainvil Flechier,
et al., respondents.

(Index No. 5690/06)

Gary P. Kauget, P.C., Brooklyn, N.Y. (Karen M. Emma 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 (Martin, J.), dated September 29, 2011, which granted the defendants' motion for summary judgment dismissing the complaint on the ground that she 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 defendants' motion for summary judgment dismissing the complaint is denied.

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 Eycler*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbosacral regions of the plaintiff's spine did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Rodriguez v Huerfano*, 46 AD3d 794, 795). The defendants also submitted certain evidence establishing, prima facie, that the plaintiff did not sustain a serious injury under the 90/180-day category of Insurance Law § 5102(d) (*cf. Mensah v Badu*, 68 AD3d 945, 946).

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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 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). Accordingly, the Supreme Court should have denied 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