

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

D36326
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_____AD3d_____

Submitted - September 19, 2012

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

2012-01230

DECISION & ORDER

Jose Nelson Hernandez, respondent, v Lauren Raffetto,
et al., appellants.

(Index No. 16591/10)

Richard T. Lau, Jericho, N.Y. (Kathleen E. Fioretti of counsel), for appellants.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Nassau County (Feinman, J.), entered January 11, 2012, which denied their 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 defendants' motion for summary judgment dismissing the complaint is granted.

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 Eyler*, 79 NY2d 955, 956-957). The defendants submitted competent medical evidence establishing, prima facie, that the alleged injuries to the plaintiff's left shoulder, left elbow, and right knee did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614).

November 7, 2012

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In opposition, the plaintiff failed to raise a triable issue of fact (*see Resek v Morreale*, 74 AD3d 1043; *Raleigh v Ram*, 60 AD3d 747, 747-748). Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

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

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court