

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

D36635
G/kmb

_____AD3d_____

Submitted - November 7, 2012

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2012-04103

DECISION & ORDER

Edward M. Walsh, respondent, v Toni A. Cascone,
appellant.

(Index No. 100251/10)

DeSena & Sweeney, LLP, Hauppauge, N.Y. (Shawn P. O'Shaughnessy of counsel),
for appellant.

Subin Associates, LLP, New York, N.Y. (Eric D. Subin of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Richmond County (Fusco, J.), dated March 19, 2012, which denied her 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 affirmed, with costs.

The defendant met her 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 defendant established, prima facie, that the plaintiff's injuries were not caused by the subject accident (*cf. Jilani v Palmer*, 83 AD3d 786, 787).

In opposition, however, the plaintiff submitted evidence raising a triable issue of fact as to whether the alleged injury to his right shoulder was caused by the subject accident (*see Perl v*

Meher, 18 NY3d 208, 218-219; *Sforza v Big Guy Leasing Corp.*, 51 AD3d 659, 661). Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint.

RIVERA, J.P., FLORIO, DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court