

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

D36780
O/kmb

_____AD3d_____

Submitted - October 3, 2012

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

2011-08709

DECISION & ORDER

Marta Granela, appellant, v Joseph Ruppert,
respondent.

(Index No. 12273/09)

Getz & Braverman, P.C. (Pollack, Pollack, Isaac & De Cicco, New York, N.Y.
[Brian J. Isaac and Michael H. Zhu], of counsel), for appellant.

Eisenberg & Kirsch, Liberty, N.Y. (Robert Lefland of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Orange County (Bartlett, J.), dated June 30, 2011, which granted the defendant's 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 defendant's motion for summary judgment dismissing the complaint is denied.

The defendant met his 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 submitted competent medical evidence establishing, prima facie, that the alleged injuries to the cervical and lumbar regions of the plaintiff's spine did not constitute serious injuries within the meaning of Insurance Law § 5102(d) (*see David v Caceres*, 96 AD3d 990, 990-991; *Rodriguez v Huerfano*, 46 AD3d 794, 795).

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However, in opposition, the plaintiff raised a triable issue of fact as to whether any of the alleged injuries to the cervical and lumbar regions of her spine constituted a serious injury 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; *David v Caceres*, 96 AD3d at 991). Accordingly, the Supreme Court should have denied the defendant's motion for summary judgment dismissing the complaint.

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