

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

D36795
C/kmb

_____AD3d_____

Submitted - November 26, 2012

PETER B. SKELOS, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2012-01136

DECISION & ORDER

Ernest Williams, respondent, v Town of Greenburgh,
et al., appellants.

(Index No. 26566/08)

Timothy W. Lewis, Town Attorney, Greenburgh, N.Y. (Richard L. Marasse of
counsel), for appellants.

Owen & Eddy, White Plains, N.Y. (W. David Eddy, Jr., of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered December 14, 2011, 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 on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d) is granted.

The defendants demonstrated their prima facie entitlement to judgment as a matter of law by establishing, through competent medical evidence, that the plaintiff's condition did not result from the subject accident (*see Scott v Martinez*, 99 AD3d 984; *Enyah v Sherpa*, 98 AD3d 993). In opposition, the plaintiff failed to raise a triable issue of fact. The affidavit of the plaintiff's expert was conclusory on the issue of whether the plaintiff's condition was the result of the subject accident (*see Barry v Future Cab Corp.*, 71 AD3d 710; *Piperis v Wan*, 49 AD3d 840). Accordingly, the

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defendants' motion should have been granted.

SKELOS, J.P., BALKIN, CHAMBERS and MILLER, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court