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

D55460
C/htr

_____AD3d_____ Submitted - April 18, 2018

MARK C. DILLON, J.P.
SANDRA L. SGROI
SYLVIA O. HINDS-RADIX
VALERIE BRATHWAITE NELSON
ANGELA G. IANNACCI, JJ.

2017-01456 DECISION & ORDER

Heesook Choi, appellant, v Joseph Mendez, respondent.

(Index No. 13138/13)

Andrew Park, P.C., New York, NY (Steve J. Park of counsel), for appellant.

DeSena & Sweeney, LLP, Bohemia, NY (Shawn P. O'Shaughnessy of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Paul J. Baisley, Jr., J.), dated December 14, 2016. The order granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for personal injuries that she allegedly sustained in a motor vehicle accident. The defendant moved 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. The Supreme Court granted the defendant's motion, and the plaintiff appeals.

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 and the plaintiff's left shoulder did not

constitute serious injuries under either the permanent consequential limitation of use or significant limitation of use categories of Insurance Law § 5102(d) (*see Staff v Yshua*, 59 AD3d 614), and that, in any event, these alleged injuries were not caused by the subject accident (*see Gouvea v Lesende*, 127 AD3d 811; *Fontana v Aamaar & Maani Karan Tr. Corp*., 124 AD3d 579; *Jilani v Palmer*, 83 AD3d 786, 787). In addition, the defendant established, prima facie, that the plaintiff did not sustain a serious injury under the 90/180-day category of Insurance Law § 5102(d) by submitting a transcript of the plaintiff's deposition testimony, which demonstrated that she missed about six weeks of work for the first 180 days following the accident (*see John v Linden*, 124 AD3d 598, 599; *Marin v Ieni*, 108 AD3d 656, 657; *Richards v Tyson*, 64 AD3d 760, 761). In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, we agree with the Supreme Court's determination granting the defendant's motion for summary judgment dismissing the complaint.

DILLON, J.P., SGROI, HINDS-RADIX, BRATHWAITE NELSON and IANNACCI, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court