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

D55642
M/htr

_____AD3d_____ Submitted - May 16, 2018

JOHN M. LEVENTHAL, J.P.
LEONARD B. AUSTIN
JEFFREY A. COHEN
BETSY BARROS
LINDA CHRISTOPHER, JJ.

2017-00244 DECISION & ORDER

Wendy Rivera, appellant, v David Reyes Alvarado, et al., respondents.

(Index No. 708312/14)

Sim & Record, LLP, Bayside, NY (Sang J. Sim of counsel), for appellant.

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

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Marguerite A. Grays, J.), entered December 6, 2016. The order granted 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) 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 denied.

This action arises from a motor vehicle accident that occurred on February 3, 2014, at or near the intersection of Francis Lewis Boulevard and Laurelton Parkway in Queens. The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained in the accident. The defendants 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 accident. The Supreme Court granted the defendants' motion, and the plaintiff appeals.

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 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 cervical and lumbar regions of the plaintiff's spine 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, the alleged injuries were not caused by the accident (*see Gouvea v Lesende*, 127 AD3d 811; *Fontana v Aamaar & Maani Karan Tr. Corp*., 124 AD3d 579).

In opposition, however, the plaintiff raised a triable issue of fact as to whether she sustained serious injuries to the cervical and lumbar regions of her spine under the permanent consequential limitation of use and significant limitation of use categories of Insurance Law § 5102(d) as a result of the accident (*see Perl v Meher*, 18 NY3d 208, 218-219; *see generally Jilani v Palmer*, 83 AD3d 786, 787).

The defendants' remaining contention is without merit.

Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint.

LEVENTHAL, J.P., AUSTIN, COHEN, BARROS and CHRISTOPHER, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court